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# ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 410

DATE: Wednesday, November 11, 1992.

BEFORE:

A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER of a Notice by The Honourable  
Jim Bradley, Minister of the Environment,  
requiring the Environmental Assessment  
Board to hold a hearing with respect to a  
Class Environmental Assessment (No.  
NR-AA-30) of an undertaking by the Ministry  
of Natural Resources for the activity of  
Timber Management on Crown Lands in  
Ontario.

-----  
Hearing held at the Civic Square,  
Council Chambers, 200 Brady Street,  
Sudbury, Ontario on Wednesday, November  
11, 1992, commencing at 9:00 a.m.

-----  
VOLUME 410

BEFORE:

MRS. ANNE KOVEN  
MR. ELIE MARTEL

Chairman  
Member



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I N D E X   O F   P R O C E E D I N G S

<u>ARGUMENT:</u>	<u>Page No.</u>
Freidin (in reply)	69865-



1           ---Upon commencing at 9:00 a.m.

2           MADAM CHAIR: Good morning, Mr. Freidin.

3           MR. FREIDIN: Good morning.

4           MADAM CHAIR: The panel is ready to hear  
5           your argument in reply.

6           Today is Remembrance Day and we are very  
7           grateful that everyone who would not have worked today  
8           came to the hearing here in Sudbury, but what we would  
9           like to do is take a break just before eleven o'clock  
10          so people can attend a memorial service across the  
11          street if they want.

12          So why don't we break about ten to eleven  
13          and return about -- what time would you suggest?

14          Return at 12:15 or 12:30?

15          How about we come back at 12:30. We will  
16          adjourn at ten to eleven and come back at 12:30 and  
17          that will be it for lunch. Okay?

18           MR. FREIDIN: Yes.

19           MADAM CHAIR: Thank you.

20          MR. FREIDIN: Madam Chair, I assume  
21          everyone has been provided with a copy of a one-page  
22          document which outlines the subject matters that I  
23          intend to address during the reply argument.

24          You will note that a lot of the subject  
25          matters are similar to subject matters which were

1       addressed in everyone's arguments, including the  
2       subject matters were topics addressed in my  
3       argument-in-chief. I don't intend to repeat my  
4       argument-in-chief, but rather to respond specifically  
5       to the submissions raised in the arguments of the other  
6       parties.

7       REPLY ARGUMENT BY MR. FREIDIN:

8               I want to start off by dealing with a  
9       number of environmental assessment matters and the  
10      first matter you see is enhancement of the environment.

11              Madam Chair, Mr. Martel, submissions have  
12      been made that a proponent when submitting an  
13      environmental assessment must describe how the  
14      environment can be enhanced through carrying out the  
15      undertaking.

16              Indeed, the Coalition takes the position  
17      that it is a requirement of the Environmental  
18      Assessment Act that enhancement of the environment be  
19      addressed, that it is a purpose of the EA Act and that  
20      it must be addressed both in the environmental  
21      assessment, what we are involved in here, and during  
22      timber management planning at the local level.

23              Northwatch have also taken the position  
24      that the Board should examine means by which a  
25      proponent can enhance the environment. You will recall

1 those submissions were made primarily in relation to  
2 the social and economic environment and they request  
3 the Board to impose terms and conditions of approval  
4 which would require enhancement measures to be  
5 undertaken or to be identified as part of timber  
6 management planning.

7                   Mr. Axford, on behalf of the Canadian  
8 Association Of Single Industry Towns, submitted that  
9 enhancement must be addressed in an environmental  
10 assessment and during timber management planning.

11                  In that regard I would refer you to his  
12 argument, submission No. 6, and you may recall his  
13 response to the Board issue No. 1 which dealt with  
14 forest management versus timber management where he  
15 referred to the phrase in Section 2 of the  
16 Environmental Assessment Act about wise management in  
17 Ontario of the environment. He submitted to you that  
18 what that meant was that you have to deal with  
19 optimization, not just regulation.

20                  The Ministry of Natural Resources'  
21 response to the suggestion that enhancement is a  
22 requirement is set out in MNR's argument at page No.  
23 22. I would ask you to turn to that page.

24                  Before we get into the some of the  
25 wording on that page I should make it very clear that

1       it is the position of the Proponent that enhancement is  
2       not a requirement of the Environmental Assessment Act.  
3       It is not something which must be addressed either in  
4       an environmental assessment or, in the case of this  
5       undertaking, during timber management planning at the  
6       forest management unit level.

7                          On page No. 22, the first full paragraph  
8       and the third pull paragraph were the ones which were  
9       reproduced in Northwatch's argument where it says in  
10      the first paragraph:

11                         "The EA Act is not directed toward  
12                         enhancement of the economic situation of  
13                         any particular individual or group.  
14                         Its primary purpose is to regulate and  
15                         control the potential effects of various  
16                         undertakings on the environment."

17                         The third paragraph:

18                         "The EA Act does not require the  
19                         proponent of an undertaking to create  
20                         additional effects; that is by enhancing  
21                         or optimizing existing elements of the  
22                         environment which may be affected by that  
23                         undertaking, including the socio-economic  
24                         environment.

25                         "To the extent that the environment is

1 enhanced, this is a positive effect of  
2 the undertaking which is waived by the  
3 Minister or the Board in determining  
4 whether approval to proceed with the  
5 undertaking should be granted under the  
6 EA Act."

7 I will be making further submissions  
8 about this weighing or balancing of positive and  
9 negative effects later in my submissions.

10 I would direct your attention  
11 particularly to footnote 63 and it is a footnote in  
12 relation to the fourth full paragraph where we have  
13 stated:

14 "If it were the case that every  
15 proponent of every undertaking submitted  
16 for approval under the EA Act were  
17 required to enhance or optimize the  
18 environment, the purpose of every  
19 undertaking would be the same; that is  
20 creating the best possible mix of  
21 benefits. "

22 MNR submits that this not the intent of  
23 the Environmental Assessment Act and it is not required  
24 by the words of the act.

25 Footnote 63 is a comment made by the

1 former chair, and the volume and page number is  
2 identified, where he stated:

3 "The Board has held itself on several  
4 occasions that you are not necessarily  
5 after the best environmental solution,  
6 but one that on balance is acceptable.

7 Section 2 isn't indicating that the  
8 purpose of the act is to provide the best  
9 for the people of Ontario, but that it  
10 provides on balance something that  
11 contributes to the betterment which may  
12 be lower in scale than the best and it  
13 must be something that at least protects,  
14 conserves or provides for the wise  
15 management in Ontario of the  
16 environment and that, I would suggest to  
17 you, also doesn't mean the best  
18 solution."

19 So what, in effect, I am saying, Madam  
20 Chair, Mr. Martel, is that the Environmental Assessment  
21 Act expects the decision maker to examine the facts as  
22 to how the undertaking is carried out, and in doing  
23 that assessment the decision maker determines what  
24 positive effects on the environment are created by the  
25 undertaking in the way the undertaking is carried out.

1                   The decision maker also assesses what the  
2 negative effects are and it is those positive effects  
3 and negative effects that the decision maker looks at  
4 and determines whether on balance the undertaking is  
5 one where the positive effects are such that the  
6 negative effects become acceptable, and that on balance  
7 one is willing to accept the negative effects which are  
8 created in order to achieve the positive effects which  
9 are created by the undertaking in the manner that it is  
10 carried out.

11                  It is not the function of environmental  
12 assessment or decision makers to look at that balance  
13 and say -- pardon me, when you look at that, if on  
14 balance the positives are such that it is acceptable to  
15 accept a negative, then you approve the undertaking,  
16 and in that situation it is not the function of the  
17 decision maker, in my respectful submission, to say:  
18 Well, the positive outweigh the negative, but we think  
19 we can make it even more positive.

20                  That, in my respectful submission, is  
21 enhancements and that, in my respectful submission, is  
22 not a function of a decision maker in determining  
23 whether to accept an undertaking.

24                  I would ask you to turn to page 31 of  
25 MNR's argument. On page 31, starting in the second

1 last full paragraph, and I am not going to read it to  
2 you, but you will note in the second last full  
3 paragraph, four lines down in the left-hand margin it  
4 says "regardless", that was where Mr. O'Leary started  
5 quoting to you in relation to this argument on the  
6 issue of enhancement and he read to you that section,  
7 going on to page 32 and going down to the end of the  
8 first full paragraph on page 32. He may have left some  
9 of it out, but in effect he read most of that.

10                   The portion of that that Mr. O'Leary  
11 highlighted and which give rise to some concern on  
12 behalf of his client was the statement made in the last  
13 sentence in the first paragraph on page 32 where the  
14 Ministry's argument states, and I quote:

15                   "Where it is reasonable to do so, the  
16 proponent may seek to increase or  
17 'enhance' the positive effects of the  
18 undertaking, and to do so would obviously  
19 not be inconsistent with the EA Act."

20                   The Coalition took issue with that  
21 because they felt it was improper to say that the  
22 Proponent may because their positive is that the  
23 Proponent must.

24                   You will recall that he also referred to  
25 the statement leading up to footnote No. 26. You will

1 see footnote No. 26 is in the second line on page No.  
2 32 and you will note that the statement for which the  
3 cases cited begins on page 31. If I might just read  
4 that. Going to the last three lines on page 31:

5 "In previous decisions, the Board has  
6 found that the purpose of the EA Act, in  
7 referring to the 'betterment' of the  
8 people of Ontario, is linked to the  
9 concept of 'need'; that is, in approving  
10 undertakings the Board should be  
11 satisfied that there is a need for the  
12 undertaking, and that it in some way  
13 contributes to the 'betterment' of the  
14 people sufficiently that the known  
15 detrimental effects are acceptable."

16 Essentially that's the same proposition  
17 that I just read to you a few moments ago.

18 I think it would be useful to read or  
19 bring to your attention the following two paragraphs  
20 because it further explains the Ministry's position in  
21 this regard.

22 So after making the comment at the end of  
23 the first full paragraph that one may seek to increase  
24 or the positive effects of the undertaking, but it is  
25 not a requirement, it goes on and says:

1                   "This does not mean, however, that the  
2                   'betterment of the people of the whole or  
3                   any part of Ontario' requires, or  
4                   is equivalent to, enhancement or  
5                   'optimization' of the environment or that  
6                   every proponent of an undertaking must  
7                   seek to enhance or optimize the  
8                   environment; that is, to make enhancement  
9                   or optimization of the environment the  
10                  purpose of the undertaking.

11                 "In the context of this hearing, the  
12                 proponent wishes to carry out the  
13                 undertaking of timber management, for the  
14                 purpose of providing a continuous and  
15                 predictable supply of wood for Ontario's  
16                 forest products industry. The activities  
17                 which comprise the undertaking of timber  
18                 management can have numerous incidental  
19                 positive effects (e.g. creation of  
20                 wildlife habitat and provision of access  
21                 for recreational and fire management  
22                 purposes). However, the provision of  
23                 those positive effects or 'benefits' is  
24                 not the purpose for which MNR seeks to  
25                 carry out the undertaking of timber

1                   management. The undertaking for which  
2                   the proponent seeks approval in this  
3                   hearing is not the management of  
4                   non-timber resources for the purpose of  
5                   'optimizing' the benefits flowing from  
6                   the management of those resources."

7                   Mr. O'Leary did not agree with the  
8                   interpretation that the Ministry of Natural Resources  
9                   put on the two cases which are identified in footnote  
10                  26.

11                  He submitted that -- well, I would submit  
12                  that if one reads those cases, and one need not go much  
13                  further than reading excerpts which are found in  
14                  footnote 26, will in my submission come to the  
15                  conclusion that those cases submit the propositions  
16                  that I have been putting forward to you or support the  
17                  proposition that I have been putting forward in  
18                  relation to enhancement and what it means when you  
19                  balance positive and negative effects.

20                  They do not, in my respectful submission,  
21                  support the proposition that enhancement is a  
22                  requirement.

23                  In Volume 404 at page 69,183 to -84, and  
24                  that's part of the submissions made during argument by  
25                  the Coalition, Mr. O'Leary submitted that the result of

1 MNR's interpretation, the one that I put forward to you  
2 about the balance, Mr. O'Leary submitted that the  
3 result of MNR's interpretation of those cases could  
4 result in a situation where an undertaking is approved  
5 because the detrimental effects were found to be  
6 acceptable, and then he went on and said:

7                   "Notwithstanding the fact that the  
8                   disadvantages of proceeding with the  
9                   undertaking outweigh the advantages."

10                  At page 69,184 he went on and said that  
11                  in the Coalition's view that when MNR cited those two  
12                  decisions -- if I could just have one moment, please.  
13                  He said this:

14                  "And then you cite two decisions and  
15                  it is submitted that those decisions..."  
16                  this is his interpretation of those,

17                  "...those decisions speak to the  
18                  proposition that a proponent must weigh  
19                  the advantages against the disadvantages,  
20                  not whether or not detrimental effects  
21                  are acceptable."

22                  My response to that is, whether or not  
23                  detrimental effects are acceptable is the product of  
24                  weighing the advantages against the disadvantages.

25                  We are not in any way suggesting that

1 those cases or our submission should be taken as saying  
2 that an undertaking would be approved when the  
3 disadvantages outweigh the advantages.

4 It is clear in our written argument, and  
5 I highlight it again now, that how you determine  
6 whether any detrimental effects of the undertaking are  
7 on balance acceptable is by weighing the advantages of  
8 proceeding against the disadvantages of proceeding.

9 In this particular undertaking, we submit  
10 that the positive effects outweigh on balance the  
11 negative effects of timber management and on that basis  
12 the undertaking should be approved.

13 MADAM CHAIR: Could you slow down a  
14 little, please, Mr. Freidin.

15 MR. FREIDIN: Yes.

16 OFAH had another concern or criticism of  
17 the Ministry's position. Mr. Hanna criticized the  
18 Ministry for concentrating on negative impacts and he  
19 said that by doing so the Ministry had gone down the  
20 wrong road. In effect, that we did not consider  
21 enhancement. You will find Mr. Hanna's submissions in  
22 that regard in Volume 404 at pages 69,186 to -188.

23 In response, I submit that MNR is on the  
24 right road and that a reading of the Environmental  
25 Assessment Act indicates quite clearly that the focus

1       is intended to be on the protection of the environment,  
2       not on enhancement.

3                     If you have the Environmental Assessment  
4       Act before you, I would like to refer you to some  
5       sections which, in my submission, support the  
6       proposition that I have just made. It may or may not  
7       be necessary to look at the act. I can go through this  
8       fairly quickly.

9                     Section 2, that was referred to a number  
10      of times by Mr. Hanna, is the purpose section of the  
11      act and it refers to providing for the protection,  
12      conservation and wise management in Ontario of the  
13      environment.

14                  It doesn't use the words enhancement. If  
15      enhancement was to be one of the purposes of the act, I  
16      submit to you it would have been a very easy matter for  
17      the legislative drafters to include the word and it is  
18      not there.

19                  In Section 5(3), and in particular  
20      5(3)(c)(iii), it is clear that the focus is on  
21      protection. 5(3) is the section which indicates what  
22      the environmental assessment shall consist of and it  
23      indicates that after identifying the potential effects  
24      that might be caused it says:

25                  "There must be a description of..."

1 and I quote,

2            "...the actions necessary or that may  
3            reasonably be expected to be necessary to  
4            prevent, change, mitigate or remedy the  
5            effects upon or the effects that might  
6            reasonably be expected upon the  
7            environment by the undertaking, the  
8            alternative methods of carrying out the  
9            undertaking and the alternatives to the  
10           undertaking."

11           In my submission those words indicate the  
12           focus is on prevention of negative effects.

13           In Section 14(1)(b)(ii), and Section  
14           14(1)(b) is the section which indicates the types of  
15           terms and conditions the Board can impose, and in that  
16           section it indicates that you can impose terms and  
17           conditions requiring or specifying the works or actions  
18           to prevent, mitigate or remedy effects of the  
19           undertaking on the environment.

20           The last section I would refer you to is  
21           back to Section 5(3) and in particular 5(3)(d) which  
22           indicates that an environmental assessment must contain  
23           an evaluation of the advantages and disadvantages to  
24           the environment of the undertaking, the alternative  
25           methods of carrying out the undertaking and the

1           alternatives to the undertaking.

2                         There is no reference there to  
3           enhancement and it is my submission that it is that  
4           provision which is the direction to carrying out the  
5           balancing of positive and negative effects analysed in  
6           Section 5(3)(c). That is the direction to do the  
7           balancing of positive and negative that I referred to  
8           earlier in my submissions.

9                         I should point out that on page 31 of our  
10          argument we make the comment in the second last  
11          paragraph, in the last line, just so there is no doubt  
12          about this:

13                         "The EA Act clearly does not  
14          contemplate that there will be no  
15          negative environmental effects."

16                         If it were otherwise we wouldn't be doing  
17          the balancing act contemplated by Section 5(3)(d).

18                         The next point I would like to address is  
19          to sort of answer the question of whether MNR has  
20          suggested in its case somewhere that enhancement is a  
21          requirement, and I emphasize requirement, because some  
22          parties have suggested that that is what has occurred.  
23          MNR submits that those suggestions are incorrect and  
24          should not be accepted.

25                         I am referring specifically to the

1 comment by Northwatch where they suggested that MNR has  
2 admitted that there is a duty or a requirement to  
3 enhance as part of the environmental assessment or  
4 during planning at the local level.

5 The portion of Northwatch's argument  
6 where you will find that position set out is at page 24  
7 of their argument where, after reproducing two of the  
8 paragraphs from our argument where we basically said  
9 enhancement is not part of environmental assessment,  
10 their argument states:

11 "In their evidence the proponent  
12 provides arguments that would suggest  
13 otherwise. Suggests, in fact, that at  
14 least one of the purposes of the  
15 undertaking is to enhance the  
16 socio-economic environment."

17 Then they cited a comment in the  
18 introduction to that portion of our Panel No. 10 that  
19 dealt with social and economic environment.

20 That section said:

21 "The purpose of this document is to  
22 identify the potential environmental  
23 effects of the various systems and  
24 methods of harvest on the socio-economic  
25 environment and the actions that can be

taken to enhance..." and she emphasized enhanced,

"...positive effects. "

It is my submission, Madam Chair, Mr. Martel, that although timber management may create positive effects on the social and economic environment, it is not a requirement that any particular effect be created.

A proponent may in its discretion do or take certain actions to create a positive effect. Indeed, perhaps, to attempt the benefit or produce positive effects for a particular segment of society, but it is not a requirement to do so, either as part of forest management planning at the local level or environmental - I am reminded that I said forest management planning - timber management planning at the local level or in environmental assessment for the reasons I have indicated.

Having gone through these submissions, assuming for the moment you accept them and say: All right, we agree with Mr. Freidin's submission that it is not a legal requirement to enhance, you may ask yourself: Well, should the Board order enhancement measures or require the planning process to consider them even if it is not a requirement of the EA Act.

1                   The answer to is that to that question is  
2 no, you shouldn't.

3                   The reasons I make that submission is  
4 because, in my submission, to do so would be beyond  
5 your jurisdiction.

6                   Why? Firstly, if it is not a purpose of  
7 the Environmental Assessment Act to do so, you will be  
8 going beyond your mandate to order it to occur.

9                   Secondly, attempting to enhance the  
10 environment through the means proposed by some parties,  
11 I am referring particularly to Forests for Tomorrow and  
12 the Coalition, is, in my submission, a different  
13 purpose than the purpose of the undertaking of timber  
14 management and the Board has decided that the purpose  
15 of the undertaking should not be changed.

16                   Thirdly, once you are into a situation of  
17 trying to enhance the environment, you are involved in  
18 an exercise of making decisions regarding what you want  
19 to produce from the land base, and I submit that  
20 regardless of how you characterize that exercise - I  
21 emphasize, regardless of how you characterize that  
22 exercise - you are involved in optimization or making  
23 policy decisions regarding land use.

24                   The reason that I emphasized the phrase  
25 'regardless of how you characterize it' is because the

1       Coalition have said that they have dropped their goal  
2       statement in their terms and conditions.

3                   Their original terms and conditions 3 and  
4       the ones which in effect indicated that the purpose  
5       that they were trying to achieve was the optimum --  
6       pardon me, the mix of benefits. I should have the  
7       exact words - the optimum mix of benefits, I submit to  
8       you that you should -- they indicated as a result of  
9       changing that, by dropping that they were no longer  
10      doing or attempting to do indirectly what they couldn't  
11      do directly.

12                  I submit to you that you should reject  
13      that submission because the minute you start talking  
14      about enhancement, which they continue to do, they are  
15      talking about pursuing a different purpose.

16                  It is interesting to note that although  
17      they dropped the goal statement, with few minor  
18      exceptions everything else in their lengthy terms and  
19      conditions have stayed the same.

20                  You will remember Dr. Quinney's evidence  
21      during my cross-examination that everything in their  
22      terms and conditions were designed to achieve the  
23      purpose as set out in their terms and conditions 3 and  
24      4.

25                  Therefore, based on that evidence alone,

1       it is clear that the Coalition, notwithstanding  
2       dropping two terms and conditions, are continuing to  
3       attempt to achieve those same purposes which are  
4       different than, and Dr. Quinney agreed with me, are  
5       different than the purpose of the undertaking which has  
6       been put before you for approval.

7                     O'LEARY: Madam Chair, if I might just  
8       briefly intercede here.

9                     Mr. Freidin indicated that but for the  
10      change in respect of the goal statement that the  
11      Coalition had made virtually no changes to its terms  
12      and conditions and, with respect, that's incorrect.

13                    In fact, we handed out with our summary a  
14      list of those deletions and changes and it is  
15      respectfully submitted that those are quite  
16      significant. I think Mr. Freidin is incorrect in that  
17      regard I draw that to his attention.

18                    MR. FREIDIN: Madam Chair, I ask you to  
19      examine the changes and come to your own conclusion on  
20      that matter.

21                    If I haven't given enough credit to the  
22      changes which were made I apologize, but I would ask  
23      you to look at the changes and answer the question on  
24      your own, whether in fact the changes are substantial  
25      enough that they are really no longer attempting to

1 achieve the same purpose as originally stated.

2 The next issue that I would like to  
3 address are the submissions of Forests for Tomorrow and  
4 the Coalition revolving around the fact that no level  
5 of wood supply is contained in the statement of purpose  
6 of the undertaking.

7 Forests for Tomorrow have submitted that  
8 because there is no specified level in that statement  
9 of purpose that any alternative method of planning  
10 which produces a predictable and specified level will  
11 meet the purpose of the undertaking.

12 The Coalition in Volume I of their  
13 written argument at page 45, commencing at page 45 deal  
14 with this issue of no level of wood being specified.

15 In paragraph 168 they say, and I quote:

16 "There is no explicit or implicit  
17 suggestion that the term continuous has  
18 any specific level of wood supply  
19 attached."

20 That is the term 'continuous' in the  
21 statement of purpose is to provide a continuous and  
22 predictable supply of wood to Ontario's forest products  
23 industry.

24 At paragraph 157 they state, and I quote:  
25 "The statute..." referring to the EA

1       Act,

2                 "...requires that alternative levels of  
3                 wood supply and the advantages and  
4                 disadvantages of each for the environment  
5                 must be considered. It is submitted that  
6                 the lack of a specific number or level  
7                 for wood supply in the statement of  
8                 purpose does not mean that no wood can be  
9                 supplied or that the amount of wood  
10                 supplied becomes a proper subject matter  
11                 of planning at the forest management unit  
12                 level."

13                 It would be okay if the amount of wood  
14                 supply was changed or predicted every five years  
15                 because the level of wood would still be continuous.

16                 I submit to you that such an  
17                 interpretation is just impractical given the reality of  
18                 the forest industry, the provincial program of timber  
19                 management and the practice of timber management as it  
20                 has been described to you over the last four and a half  
21                 years.

22                 You have heard that the Industry requires  
23                 a level of certainty regarding the wood supply it will  
24                 have. Those submissions have been made primarily in  
25                 the context of saying that the Industry has to know the

1 land base which is available for timber management  
2 because it is on that basis that long-term projections  
3 are made and investment decisions are in part based.

4 In my submission, to look at this issue  
5 of wood supply, in terms of whether it is in the  
6 statement of purpose, in such a theoretical and  
7 unrealistic way as to say let's discuss that issue of  
8 wood supply at the FMU level every five years.

9 It is my respectful submission that what  
10 the submissions of FFT and the Coalition come down to  
11 is an untenable proposition and one which the Board  
12 should not accept.

13 The next subject matter on the outline is  
14 the purpose of the undertaking of timber management --  
15 no, sorry, I have got it as planning as part of the  
16 undertaking.

17 The issue was raised during the argument  
18 of many of the other parties as to what gets approved  
19 when the undertaking is approved. Forests for Tomorrow  
20 stated in their oral submissions that:

21 "In a class environmental assessment  
22 the undertaking doesn't get approved,  
23 rather the environmental assessment gets  
24 approved."

25 They stated that.

1                    "In a class environmental assessment  
2                    the undertaking doesn't get approved,  
3                    rather the environmental assessment gets  
4                    approved."

5                    MR. LINDGREN: Madam Chair, if Mr.  
6                    Freidin is going to state the position of FFT he has an  
7                    obligation to state it correctly.

8                    FFT clearly submitted to the Board that  
9                    under an environmental assessment hearing like this in  
10                  a Class EA situation it is the planning process in a  
11                  Class EA that gets approved. That's what the  
12                  undertaking is, not that no undertaking gets approved.  
13                  That's not the position of FFT.

14                  MR. FREIDIN: I don't have ready access  
15                  to the transcript where that particular proposition  
16                  comes from. I will attempt to provide it to the Board.  
17                  If I can't I will retract the statement.

18                  It is quite clear and very relevant to my  
19                  later submission that FFT are taking the proposition  
20                  that the undertaking is the planning process and the  
21                  planning process only, but we will come to that in a  
22                  moment.

23                  The Coalition have stated that the  
24                  activities aren't approved as a result of this  
25                  environmental assessment because to do so would be

1       granting the proponent, in effect, a carte blanche to  
2       carry out timber management without any bump-up  
3       provisions. They say --

4                     O'LEARY: May I ask, Mr. Freidin, where  
5       is the reference in the argument to that statement?

6                     MR. FREIDIN: I will give you that one  
7       too. I don't have it.

8                     I am going to make this submission on the  
9       basis of FFT's proposition that they have indicated  
10      that the environmental assessment gets approved and not  
11      the undertaking. You will be able to disregard that if  
12      I can't substantiate that that is the proposition that  
13      they put forward.

14                  Let me just very quickly indicate that if  
15      you look at the act it is quite clear that the act  
16      talks about environmental assessments being accepted  
17      and undertakings being approved, and if anyone has left  
18      the suggestion with you in the class environmental  
19      assessment that an undertaking doesn't get approved,  
20      that there is no basis for that. Just look at the act.

21                  The act talks about the approvals of  
22      undertakings and that means that you get approval of  
23      the undertaking whether it is an individual project, an  
24      individual environmental assessment or an environmental  
25      assessment in relation to a class of undertakings.

1                   Madam Chair, I think the best thing for  
2 me to do is rather than have the next few comments  
3 based on the situation which, if my friend is right,  
4 doesn't even exist, I am going to put a tab here in my  
5 book and during the break I will see whether I can find  
6 the support for my proposition and I will come back to  
7 this. I will advise you either way what the result of  
8 my search is.

9                   During Forests for Tomorrow's argument,  
10 Mr. Lindgren was critical of MNR's argument in a number  
11 of places, but in one place in particular he indicates  
12 that MNR is taking an inconsistent position, that in  
13 one place they say they agree with your ruling of  
14 January 17th, 1990 and in another the Ministry  
15 disagrees.

16                   The section of MNR's argument that Mr.  
17 Lindgren was referring to can be found at page 7 and 8  
18 of MNR's argument.

19                   If you look at page No. 7, in the third  
20 full paragraph, there is indented a portion from the  
21 Board's ruling of January the 17th, 1990 where it  
22 indicates, four lines up from the bottom of that quote:

23                         "...the 'undertaking' before this  
24                         Board should properly be defined or  
25                         characterized as a Timber Management

1                   proposal, plan or program in respect of  
2                   the activities of access, harvest,  
3                   renewal and maintenance and hereby makes  
4                   a finding to that effect..."

5                   You will note we have added the

6 underlying.

7                   In that particular finding you have said  
8                   that the undertaking was a proposal, plan or program  
9                   and we agreed with that because the undertaking is a  
10                  program, a provincial program of activities.

11                  If you go over the page, to page 8, you  
12                  will see in that same ruling you made certain comments,  
13                  and the first part of the quote says:

14                  "It was and continues to be the  
15                  Board's view that the undertaking before  
16                  the Board comprising the subject Class EA  
17                  should properly be described in terms of  
18                  a proposal, plan or program (i.e. a  
19                  timber management planning process) in  
20                  respect of the activities..."

21                  It is that characterization with which  
22                  MNR disagree and we disagree because, in our  
23                  submission, the provincial program of timber management  
24                  cannot be described as just a planning process.

25                  Now, Mr. Lindgren made submissions to you

1       that as a result of legal submissions I made to you in  
2       my argument-in-chief that somehow the Board, if you  
3       accepted my proposition about alternative planning  
4       processes and alternative methods, that somehow you  
5       would be in a position where you could not consider the  
6       submissions of other parties regarding how to modify,  
7       improve the timber management planning process that MNR  
8       has put before you, that somehow you are going to lose  
9       your discretion to do that because of the submissions  
10      that I made.

11                   I want to highlight a comment on page No.  
12                   9 of our argument and it is about three quarters the  
13                   way down the page and in capital letters it says:

14                   "NOTE: MNR has never taken the  
15                   position that the Board is precluded  
16                   from adopting proposals put forward by  
17                   other parties in relation to planning for  
18                   the activities of timber management,  
19                   because MNR does not view the planning  
20                   process as part of the undertaking."

21                   Now, accepting for the purpose of the  
22                   argument that timber management is part of the  
23                   undertaking, our position has not changed; that is, we  
24                   are not taking the position that you are precluded from  
25                   adopting proposals put forward by other parties in

1 relation to planning for the activities of timber  
2 management. You can look at the proposals of other  
3 parties, and I emphasize re timber. You can look at  
4 our proposals

5 MR. MARTEL: Can you tell me what that  
6 means, Mr. Freidin, because MNR does not view the  
7 planning process as part of the undertaking?

8 MR. FREIDIN: That section was there and  
9 you will recall that we had taken the position that it  
10 is not necessary for you to revisit your earlier  
11 decision.

12 We are willing to proceed without  
13 challenging that particular finding, and you will  
14 recall I said that we wanted three or four propositions  
15 to be accepted because of concerns about the effect  
16 that your decision would have or could have without the  
17 clarification.

18 What I am saying is, the Ministry does  
19 not accept the correctness of the decision that timber  
20 management planning is part of the undertaking.

21 We have taken the position in this  
22 environmental assessment that it is unnecessary to ask  
23 you to change that and we have felt that it would be  
24 appropriate from the Proponent's perspective that as  
25 long as you make those clarifications that we ask for,

1       that you accept the proposition we made for the  
2       concern, is not such that it would necessitate us  
3       asking you to revisit your decision

4                 If I might, Madam Chair and Mr. Martel,  
5       tell you what the import of this is for suggestions and  
6       positions taken by some of the other parties, I can  
7       just sort of reiterate so we have got it all at once,  
8       MNR submits that the Board can entertain submissions of  
9       other parties for timber management planning, timber  
10      management planning and modify the Proponent's proposed  
11      planning process as long as it remains a timber  
12      management planning process.

13                 What the Board cannot do, in my  
14      respectful submission, is to accept or impose a  
15      planning process in relation to something other than  
16      timber management, and it is MNR's submission that the  
17      planning process put forward by Forests for Tomorrow  
18      and the Coalition is a different undertaking to achieve  
19      a different broader purpose.

20                 Forests for Tomorrow have indicated quite  
21      clearly that the planning process that they want is a  
22      planning process in relation to integrated forest  
23      management and in MNR's submission submission that is a  
24      different matter, requires a different undertaking to  
25      achieve a different broader purpose.

1                   The next topic that I would like to deal  
2 with are submissions made by some of other parties in  
3 relation to Section 5(3) of the Environmental  
4 Assessment Act. A number of the parties have taken the  
5 position that the timber management planning process  
6 must be one that meets the requirements of Section 5(3)  
7 of the Environmental Assessment Act.

8                   If I could just have one moment, please.

9                   Forests for Tomorrow have submitted that  
10 you are required -- that one is require to consider  
11 alternative environmental effects for each project at  
12 the local level and that to have that requirement would  
13 not result in duplication between what occurred in this  
14 environmental assessment because this environmental  
15 assessment did not deal with the specific sites upon  
16 which operations might be planned for during any  
17 particular timber management planning exercise.

18                  The Coalition have submitted that if the  
19 Board accepts MNR's interpretation of Section 5(3) of  
20 the Environmental Assessment Act, vis-a-vis Section  
21 5(3), and you will recall that MNR's position is that  
22 Section 5(3) is considered only once in relation to an  
23 undertaking and that is during the environmental  
24 assessment, the Coalition has suggested that if you  
25 accept MNR's interpretation that MNR will have avoided

1 the rigors of the Environmental Assessment Act and  
2 raises the picture of a flood of proponents to the EA  
3 branch trying to get approval for class environmental  
4 assessments.

5 I preface my remarks in response to those  
6 positions by reminding the Board that the wording of  
7 the Environmental Assessment Act does not support the  
8 propositions put forward by those parties who say that  
9 the requirements of Section 5(3) must be incorporated  
10 and be repeated in the planning process at the forest  
11 management unit level.

12 In my submission that is clearly not the  
13 case by simply looking at the wording of Section 5(3)  
14 of the act which says:

15 "An environmental assessment submitted  
16 to the Minister pursuant to subsection 1  
17 shall consist of..." and then it lists  
18 the environmental assessment.

19 There is not going to be another  
20 environmental assessment in relation to this hearing.  
21 It doesn't make any difference whether it is an  
22 individual project which is being assessed or whether  
23 it is a class of undertakings which is being assessed.

24 In my submission there is one  
25 environmental assessment and the the act says in the

1 environmental assessment and then it says 5(3) must be  
2 complied with.

3 As a matter of statutory interpretation,  
4 5(3) is a requirement which must be met in the  
5 environmental assessment and we submit that we have  
6 done that in a way which satisfies the requirements of  
7 that section.

8 It is our submission that timber  
9 management plans are not individual environmental  
10 assessments which some of the parties have suggested  
11 that they are.

12 In Chapter 1.5 of the Ministry's  
13 argument, at page 69 we describe why MNR took the  
14 approach that timber management could properly be  
15 described as a class of undertakings.

16 MADAM CHAIR: What page are we on, Mr.  
17 Freidin?

18 MR. FREIDIN: I'm sorry. It is MNR  
19 argument, Volume No. I, page 69.

20 MADAM CHAIR: Thank you.

21 MR. FREIDIN: You will see the  
22 explanation for taking the position that timber  
23 management could be properly described as a class of  
24 undertakings is set out in the third full paragraph.

25 I would just like to repeat part of what

1       is there because it highlights some of the reasons, but  
2       also will remind you of some of the voluminous evidence  
3       that you have heard.

4                 "Although the specific methods used to  
5       implement the undertaking will vary from  
6       place to place the range of methods  
7       available for use across the area of the  
8       undertaking can be described..."

9                 Although the potential effects of the  
10      activities and the measures available to  
11      prevent, minimize, mitigate or remedy  
12      those effects will vary from place to  
13      place, the range of effects and the range  
14      of measures available to prevent, migrate  
15      minimize or remedy those effects can be  
16      described for the entire area of the  
17      undertaking."

18                 That's what we have done in this  
19      environmental assessment.

20                 As described in that chapter and in our  
21      argument, the level of detail and the specifics of the  
22      planning at the local level must be influenced by the  
23      specific undertaking which is being assessed and  
24      because of this hearing and the type of evidence you  
25      have heard, the planning at the local level need not be

1       the same as if each TMP was an individual environmental  
2       assessment.

3                 If an individual environmental assessment  
4       had to be carried out every time a timber management  
5       plan was prepared, then the only reason for this class  
6       environmental assessment would be to design a common  
7       planning process for individual environmental  
8       assessments, but we submit that class environmental  
9       assessments are much more than that.

10               Mr. O'Leary said that the development of  
11       a common planning process is a benefit of class  
12       environmental assessments and approvals of classes of  
13       undertakings, and we agree, but as stated, there is  
14       much more to it depending on the specific undertaking  
15       being considered and the extent and detail of the  
16       environmental assessment in relation to that  
17       undertaking.

18               The suggestion of Mr. O'Leary that  
19       proponents would somehow line up to submit their Class  
20       EAs to escape the rigors of the act, I would only say  
21       that if they think four and a half years of a hearing  
22       is not rigorous examination of an undertaking, then let  
23       them start lining up.

24               The Ministry of the Environment made  
25       submissions in relation to Section 5(3). The Ministry

1 of the Environment submitted that meeting Section 5(3)  
2 at the local level means considering essential elements  
3 of Section 5(3) and they describe those essential  
4 elements as being environmental effects, the  
5 consideration of alternatives and mitigation measures.  
6 So they characterize it as considering essential  
7 elements of 5(3).

8 Other parties have said that Section 5(3)  
9 requirements apply at the local level, that they apply  
10 as a requirement of law and that all of the sections or  
11 subject matters addressed apply.

12 In my submission, when those parties - I  
13 am not referring to MOE now - when those other parties  
14 say that Section 5(3) applies at the local level, they  
15 are saying something more than what MOE have submitted.  
16 They are saying that the Proponent has to consider all  
17 the requirements of Section 5(3) including purpose and  
18 alternatives to and what has become common in  
19 environmental assessment cases and that is  
20 consideration of the null alternative in relation to  
21 alternatives to the undertaking.

22 I would submit that considering some -  
23 using MOE's words - of the elements of 5(3) at the  
24 local level because it is believed to be good  
25 environmental planning or it would be something which

1 would be desirable to have in a planning process at the  
2 local level is quite different than saying that those  
3 elements must be considered as a requirement of law.

4 MNR agrees that these elements or matters  
5 should be part of a planning process for some aspects  
6 of timber management planning where the Board feels  
7 that it makes sense that that be the case, but the  
8 Board would do that not as a matter of law and because  
9 it would not be done as a matter of law, it is  
10 incorrect to say that those elements must as a matter  
11 of law apply to all of the activities in the same way  
12 or, indeed, to say that one of those elements -- in  
13 effect, you can say one of those elements need not  
14 apply to a particular part of the planning process at  
15 all.

16 It is open to you using your common sense  
17 as to your view as to what is appropriate, not because  
18 you think that you have to do something as a  
19 requirement of law.

20 MS. SEABORN: Excuse me, Mr. Freidin.

21 Madam Chair, I don't think we made the  
22 submission to you that it was not a requirement of law  
23 for MNR to address Section 5(3).

24 MR. FREIDIN: We are saying then as a  
25 matter of law it is not required. It is as simple as

1       that.

2                   I don't want you to get the impression,  
3       of course, that when you impose your terms and  
4       conditions setting out what a planning process is that  
5       that won't become a matter of law. That will be a  
6       requirement of law. I am thinking, you shouldn't feel  
7       that you must include certain things in it as a  
8       requirement of law.

9                   The bottom line, Madam Chair, Mr. Martel,  
10      is, as you have heard me say before, there is no  
11      cookbook for your decision. You decide what activities  
12      need what type of planning and the nature of that  
13      planning and the type of planning, including the amount  
14      of detail that's required in terms of documentation and  
15      whether alternative need be considered.

16                  The Ministry of the Environment made  
17      submissions that the terms and conditions of the  
18      Ministry of Natural Resources in conjunction with  
19      theirs together, and I quote "sufficiently satisfy the  
20      requirements" of Section 5(3) of the Environmental  
21      Assessment Act.

22                  Ms. Seaborn went on and said, but we can  
23      do more than the minimum requirements of the act.

24                  In my submission, Madam Chair, if you  
25      meet the requirements of the act, you meet the

1 requirements of the act. I mean, either you meet the  
2 requirements or you don't.

3                   If you sufficiently satisfy the  
4 requirements of the Environmental Assessment Act, then  
5 you have satisfied the requirements of the  
6 Environmental Assessment Act and one cannot say as a  
7 requirement of law you must more sufficiently meet the  
8 requirements of the Environmental Assessment Act.

9                   So if one was going to go on and do more,  
10 you do so because it makes sense to do so in your  
11 discretion not because more is necessary to meet the  
12 requirements of the act.

13                  The next subject matter, Madam Chair,  
14 that I would like to address is the subject matter of  
15 null.

16                  I assume, Madam Chair, that having regard  
17 to the decision to break at ten to eleven we will go  
18 right through until ten to eleven; is that correct?

19                  MADAM CHAIR: Yes, that is correct, Mr.  
20 Freidin.

21                  MR. FREIDIN: I know that in relation to  
22 the subject matter of null you might want me to say  
23 nothing, but I will.

24                  MR. MARTEL: The preferred alternative.  
25                  MR. FREIDIN: I considered it and

1 thought...

2                   Firstly, the Ministry of the Environment  
3 referred to MNR's argument at page 83 and made the  
4 submission that MNR has admitted that in certain  
5 places, at certain times operations will not occur and  
6 that that is application of the null.

7                   The section that they refer to or must be  
8 referring to are the first three lines in the first  
9 full paragraph on page 83 where we state:

10                  "We do not dispute the the specific  
11                  conditions encountered at the management  
12                  unit level may dictate that certain  
13                  timber management activities should not  
14                  take place at specific times or locations  
15                  for sound environmental reasons."

16                  You will know, and I am not going to take  
17 you through it because I did so in my  
18 argument-in-chief, but it is in the very same paragraph  
19 if you read on where we indicate that looking at it and  
20 describing that as the null or an application of the  
21 do-nothing alternative is analytically incorrect. So  
22 just bring that to your attention.

23                  The Ministry of Natural Resources says  
24 that decisions to not operate is the product -- this  
25 goes to something that you raised with Ms. Seaborn, Mr.

1 Martel, and I will come to that in a moment, but we say  
2 that the decision to not operate is the product of the  
3 planning.

4 It is not a consideration or an option  
5 which you identify in advance of planning, that you  
6 then go on and consider in all cases and then determine  
7 whether to select it from amongst the options.

8 Mr. Martel, you made the observation, you  
9 put it this way when Ms. Seaborn described a reserve  
10 being created around a waterbody. She characterized  
11 that as the application of the null. You said that it  
12 didn't start out as null, it is as a result of thinking  
13 that you dismiss null, and you suggested maybe the  
14 Ministry of the Environment had the cart before the  
15 horse.

16 In my submission, I agree about your  
17 observation. I think the Ministry of the Environment  
18 in this case had put the cart before the horse for the  
19 reasons I have indicated.

20 It is different, even though you may end  
21 up in the same place, even though you may end up with  
22 the same result, it is different because by considering  
23 the null the way MOE have put it forward, by putting  
24 the cart in front of the horse, you end up doing more  
25 planning, preparing more documentation in each case.

1                   I don't intend to repeat all the other  
2 submissions I made in relation to why it was  
3 analytically incorrect. You will find those in my  
4 submissions in argument-in-chief.

5                   The Ministry of the Environment in  
6 support of their proposition that the Ministry in fact  
7 applies the null alternative referred to one reference  
8 from the evidence where Mr. Clark made a comment in  
9 Panel No. 10. The reference was to Mr. Clark's  
10 evidence regarding roads where there was a discussion  
11 about affecting specific values because of the location  
12 of a road and the former Chair said:

13                   "Well, what about no road at all?"

14                   And Mr. Clark said:

15                   "That would be considered as an  
16 alternative."

17                   I submit, Madam Chair, Mr. Clark's  
18 comment was not made during a discussion of null and I  
19 would suggest to you that if you read Volume 59, pages  
20 10,250 to -55 that short exchange between the former  
21 Chair and Mr. Clark will be put into context.

22                   I would ask you to accept the proposition  
23 or that you will see that Mr. Clark was not saying that  
24 he would consider the null alternative. He was saying  
25 that I will consider avoiding those values by finding a

1 different road location.

2 The next submission that the Ministry of  
3 the Environment made in relation to null arose out of a  
4 statement found in the class environmental assessment  
5 and for this purpose I think it would be worthwhile to  
6 turn to the Ministry of the Environment argument, if  
7 you have it, at page 77.

8 It is on page 77 where the Ministry of  
9 the Environment referred to an excerpt from Exhibit 4  
10 and to put this in context we probably should read the  
11 entire section. Exhibit 4 stated:

12 "While the objectives and policies  
13 arrived at through higher levels of  
14 planning and MNR provide general  
15 directions of timber management, the key  
16 decisions of 'if', 'where', 'when' and  
17 'how' timber management will take place  
18 are made in individual timber management  
19 plans. Since these decisions are made at  
20 the management planning level, the  
21 preparation of those timber management  
22 plans have been made the subject of this  
23 environmental assessment."

24 I may have to come back to this  
25 particular passage because I think it was referred to

in other context as well, but MOE suggested this in some way demonstrates that null is something contemplated as part of timber management planning because there is a consideration of the question 'if' timber management will occur.

I submit, Madam Chair, Mr. Martel, that 'if', the word 'if' in that section of the EA document, does not mean that you will consider during timber management planning whether some other use is better.

'If', the word 'if' in that context means that if there is a demand for wood in the forest management unit, and that's something that you would determine as you have seen - there are tables which indicate what the demands for wood are and they are found in the Timber Management Planning Manual - if there was a demand for wood from the forest management unit, you then proceed to plan where, when and how timber management will take place.

That's what the word 'if' is all about in that statement. It is not something which, I would suggest, is probably seized upon and characterized or seized upon as the basis to say the null should be considered or that different uses of land should be considered.

## Counsel for the Ministry of the

1 Environment made a submission during a discussion about  
2 the need to build roads to areas available for harvest,  
3 and I don't have the transcript but I believe I have  
4 this comment down accurately. Ms. Seaborn said --  
5 maybe it was Ms. Gillespie:

6 Just because you have approval across  
7 the area of the undertaking does not  
8 permit you to operate wherever you want  
9 regardless of impacts.

10 Again, she said:

11 Just because you have approval across  
12 the area of the undertaking does not  
13 permit you to operate wherever you want  
14 regardless of impacts.

15 My response to that is, firstly, MNR has  
16 never taken the position that it could operate  
17 regardless of environmental impacts.

18 Secondly, MNR submits that it can operate  
19 in all areas of the undertaking and it can do so in an  
20 environmentally sound way and that it does that through  
21 normal timber management practices and through special  
22 planning in areas of high risk which MNR has identified  
23 as being areas of concern and the planning of roads  
24 locations, all of those matters being conducted through  
25 the application of the mitigation measures that you

1 have heard about, many of which are conducted following  
2 the guidance and direction provided in implementation  
3 manuals which you have heard about.

4                   The question as to what is  
5 environmentally sound is obviously what will be  
6 determined by the Board.

7                   Ms. Seaborn was quite clear, there is no  
8 requirement in the Environmental Assessment Act to  
9 consider null.

10                  Yesterday the Board, my notes say,  
11 pressed counsel for MOE - I think that's probably as  
12 good a word as any - as to whether MOE wanted a term  
13 and condition that null be applied at the local level  
14 in the way it had been characterize by Ms. Dahl during  
15 her evidence as a planning tool and, if not, why not.

16                  MOE have not asked you to put it in their  
17 terms and conditions. In my submission, the reluctance  
18 to be adamant and serious enough about this issue of  
19 null being applied as part of a planning process - you  
20 will recall MOE said that they had met the requirements  
21 of act, that you could do more - notwithstanding that  
22 they still were not asking you to do more in relation  
23 to this subject matter, and on that basis alone I would  
24 submit that if you were thinking about applying the  
25 null or imposing a requirement to have null be

1       considered in planning, as described by Ms. Dahl, that  
2       the position of MOE before you should be considered  
3       very heavily and should cause you to lean towards  
4       rejecting the use of null at the local level as a  
5       planning tool, as described by Ms. Dahl.

6                     The Board asked Ms. Seaborn how much to  
7       say about null in your decision, and it is sort of  
8       tongue and cheek because of the subject matter being up  
9       so often for discussion, she said: Well, as little as  
10      possible.

11                  But after that, Madam Chair, you asked  
12      Ms. Seaborn what would occur on a bump-up request if in  
13      examining what had been done at planning leading to the  
14      bump-up request null -- whether null had been  
15      considered or not. The response was: MOE would  
16      consider how wide and good the Proponent's  
17      consideration of the alternatives was, and then she  
18      said this:

19                  MNR, if they ignored null, they would  
20      do so at their peril.

21                  If they ignored null, MNR would do so  
22      at their peril.

23                  Now, that is a matter of some concern.  
24      That, in my submission, is an inappropriate position to  
25      take.

1                   It is inappropriate, Madam Chair, because  
2 we have been here at this environmental assessment  
3 talking about null and, in particular having regard to  
4 this discussion, whether null should be considered at  
5 the local level and how.

6                   The Ministry of the Environment have not  
7 asked you to make it a requirement and perhaps not to  
8 say very much about it in your reasons for decision,  
9 and what will that result in?

10                  It will result in the Proponent every  
11 time there is a bump-up having to face the  
12 environmental assessment branch and say: Well, you  
13 didn't consider null, you did so at your peril.  
14 Therefore, you haven't adequately considered  
15 alternatives and, therefore, I guess we would better  
16 order an individual environmental assessment or to  
17 avoid an individual environmental assessment you,  
18 Ministry of Natural Resources, go back and consider  
19 null.

20                  We have made submissions to you before  
21 why we feel a consideration of null as described by Ms.  
22 Dahl at the local level is inappropriate. We would ask  
23 you to accept those propositions and not impose it as a  
24 requirement.

25                  We also don't believe that the Proponent

1 should be put in the position of having to be at the  
2 peril of the environmental assessment's branch view as  
3 to the need for null at the local level just because  
4 there is no specific term or condition about null.

5 I made submissions to you in my  
6 argument-in-chief about the importance of your reasons  
7 for decision. If you agree with the propositions put  
8 forward by the Ministry of Natural Resources that the  
9 application of null and the way that the Ministry of  
10 the Environment has characterized it at the local level  
11 is inappropriate, then in order to avoid the  
12 unacceptable and, I would suggest, improper position of  
13 MNR being somehow put into peril if they don't consider  
14 the null, that you can send a very strong message to  
15 the Minister of the Environment in your reasons for  
16 decision.

17 There won't be a term and condition  
18 saying null applies if you agree with our proposition,  
19 but I submit to you it is important in your reasons for  
20 decision to outline for the Minister of the Environment  
21 the discussions that have taken place here about null,  
22 that you should explain to her the positions of the  
23 various parties on this issue and why you feel it is  
24 inappropriate and unnecessary for good environmental  
25 planning to consider null in the way it has been

1 characterized by the Ministry of the Environment at the  
2 local level during during timber management planning.

3                   If you do not, then indeed the scenario  
4 that Ms. Seaborn presented and pained for you will  
5 occur, that people will request bump-ups of timber  
6 management plans or parts of timber management plans  
7 and they will be confronted with the environmental  
8 assessment branch who will say: Well, you didn't  
9 consider null and you do so at your peril and,  
10 therefore, either they are going to grant an individual  
11 EA or they are going to say with a hammer: If you  
12 don't consider null we just might give an individual  
13 environmental assessment.

14                   I don't think I have to say anything  
15 more. I think that will be completely improper. I  
16 think in fact this is a perfect example of where your  
17 reasons for decision or why your reasons for decision  
18 are so important.

19                   In relation to this issue about  
20 bump-ups -- pardon me, not bump-ups, but the comment  
21 was made that bump-up requests which were settled --  
22 let me step back.

23                   In the submissions about null, counsel  
24 for MOE made the observation that there have been  
25 bump-up requests which were settled because the people

1 who were involved in that went back and looked at wider  
2 ranges of alternatives or a wider range of alternatives  
3 and that, indeed, in some of those cases the proponent  
4 and the party who was requesting the bump-up agreed on  
5 a different alternative; that is, one that had not been  
6 considered in the original analysis.

7 I have no doubt that that occurs and will  
8 continue to occur, but the fact that that has occurred  
9 in the past is not evidence that the null alternative  
10 was considered in that exercise. Considering a  
11 different range of alternatives doesn't mean that the  
12 null alternative and the way it has been characterized  
13 by the Ministry of the Environment was considered in  
14 that exercise.

15 I think I can probably get through the  
16 submissions on bump-up in 12 minutes. Let me try. If  
17 I don't, then so be it.

18 There was a discussion and, by the way,  
19 again this is a discussion of the null -- it is sort of  
20 bump-up in the context of null.

21 There was a discussion between Ms.  
22 Seaborn and you, Mr. Martel, about starting from  
23 "scratch" and this arose out of Ms. Seaborn's  
24 clarification that on a successful bump-up; that is,  
25 where an individual environmental assessment is

1 ordered, that the undertaking in that environmental  
2 assessment should not be affected by the definition of  
3 the undertaking in this environmental assessment.

4 Have I got it right this time?

5 We agree with that proposition.

6 By the way, the record should show that I  
7 got the nod from Ms. Seaborn.

8 We agree with Ms. Seaborn's basic  
9 conclusions in those submissions - and again I tried to  
10 get her words down as accurately as I could without  
11 looking at the transcript - that you, the Board, should  
12 not try to address how MNR should address future  
13 environmental assessments; that is, environmental  
14 assessments which are ordered as a result of a  
15 successful bump-up request.

16 Now, Mr. Martel, during her submissions  
17 Ms. Seaborn was making a distinction, and I believe a  
18 proper one, between this issue about starting from  
19 scratch where, on the one hand, you are looking at that  
20 issue about when you start timber management planning  
21 at the local level, when you are preparing your  
22 five-year plan should you have to start from scratch  
23 and in that context what it means is do you really have  
24 to redo everything that was done in this environmental  
25 assessment all over again every five years during the

1 planning of that timber management operation. That was  
2 one situation.

3 The other situation is one of a bump-up  
4 request and on a bump-up request there is that request  
5 for an individual environmental assessment and if it is  
6 granted -- because I have already said the undertaking  
7 has to be defined, the purpose has to be defined, all  
8 the sections of 5(3) have to be addressed in relation  
9 to whatever that undertaking is.

10 So in that case one has to, as a matter  
11 of law, on that particular undertaking and it could be  
12 a different undertaking than the undertaking which is  
13 before you, you do start from scratch. That's what the  
14 act contemplates you doing.

15 It is an individual environmental  
16 assessment and you start off by saying purpose,  
17 alternatives to, choosing the preferred alternative,  
18 this is the undertaking.

19 Now, there is a concern, there is still a  
20 concern that on a bump-up request that the Minister of  
21 the Environment - this is a concern of the Proponent -  
22 it is a concern that on a bump-up request that the  
23 Minister of the Environment not make the Proponent go  
24 through an environmental assessment; in other words,  
25 not order an environmental assessment in relation to a

1 matter or an issue which was discussed at this hearing  
2 and upon which the Board ruled unless there is some new  
3 evidence or there is the encountering of some  
4 exceptional situation.

5                   In those cases, in either case where  
6 there is some evidence or it is indeed an exceptional  
7 situation, it is not a subject matter which was  
8 addressed or that you heard a lot of evidence about and  
9 you made a decision about, if an individual  
10 environmental assessment was ordered on such an issue  
11 it would be starting all over on that issue.

12                  Now, in that case you, as the Board, I  
13 would submit, don't have as much control in that matter  
14 about -- well, you don't have as much control in that  
15 matter as what occurs during a five-year timber  
16 management planning exercise. We all have to rely on  
17 the reasonable exercise of discretion of the Minister  
18 of the Environment.

19                  Again, I go back to your reasons for  
20 decision. Your reasons for decision are the vehicles  
21 through which starting all over again after a bump-up  
22 request will be avoided.

23                  If you are concerned that the Proponent  
24 is not put in a situation where it has to start from  
25 scratch, and by that I mean have to reargue, recanvass

1       the same issues which were dealt with here and which  
2       you have decided upon and it could be anything from  
3       something like sizes of clearcuts, whether pesticides  
4       have acceptable or unacceptable human health risks, a  
5       whole host of those things, if you are concerned that  
6       the Proponent not have to put in jeopardy and have to  
7       start from scratch and do all those things again, the  
8       way you do that is to make very clear what those issues  
9       were and what the positions on the issues were and why  
10      you came to the decision that you did.

11                  You may not have a specific term or  
12       condition about it. The way to avoid having to start  
13       from scratch is to do those reasons for decision  
14       because the Minister of the Environment when she is  
15       confronted with a bump-up request, that is what she  
16       should have before her so she can make a reasonable  
17       assessment as to whether that is being asked for by  
18       that requester is something which was decided here  
19       through great length, at great expense and should not  
20       properly be recanvassed again.

21                  I am sure that your decision will have a  
22       very persuasive value, as Ms. Seaborn said, not just  
23       for other boards. It should and, I expect, it will  
24       have persuasive value to the Minister of the  
25       Environment when she tries to decide whether somebody

1 asking for a bump-up is really asking for something to  
2 be redone again, to start from scratch on an issue  
3 which was canvassed, discussed, assessed and decided  
4 upon by this Board.

5 Mr. Martel, when addressing your concern  
6 about starting from scratch on bump-ups, I would just  
7 remind you of Ms. Seaborn's comments in that regard.  
8 You were putting to her some concern about starting  
9 from scratch on bump-up requests and she said: Bump-up  
10 is a last resort and, as you have heard, there are not  
11 a large number of bump-up requests.

12 I ask you to keep that in mind when you  
13 are considering the evidence of Ms. Dahl and my  
14 submissions in relation to that where I have submitted  
15 on behalf of the Ministry that the number of bump-up  
16 requests made in relation to timber management and, of  
17 course, they are not bump-up requests now, they are  
18 designate requests, I said that they are not large  
19 having regard to the size of the area of the  
20 undertaking, the number of projects which take place  
21 over approximately a hundred management units every  
22 year.

23 MS. SEABORN: Madam Chair - excuse me,  
24 Mr. Freidin - I believe I said there are not a large  
25 number of bump-up requests granted.

1                   MR. FREIDIN: And I think it is important  
2 to note that not a lot -- the fact that a lot of  
3 bump-up requests are not granted must be an indication  
4 of something.

5                   If that is in relation to timber  
6 management, and I took her remarks to be referring to  
7 timber management, that must indicate that not a lot of  
8 bump-up requests are valid.

9                   In terms of the absolute number again,  
10 you have my submissions as to whether the number of  
11 requests, irrespective of whether they were granted or  
12 not, were large.

13                  Madam Chair, it is twelve minutes to  
14 eleven. I can advise you that I am almost finished my  
15 EA matters, but I am going to finish in two minutes.

16                  So I understand we are going to adjourn  
17 until 12:30?

18                  MADAM CHAIR: Yes. Thank you, Mr.  
19 Freidin. We will be back at 12:30.

20 ---Luncheon recess at 10:50 a.m.

21 ---On resuming at 12:30 p.m.

22                  MADAM CHAIR: Good afternoon, Mr.  
23 Freidin. We're ready when you are.

24                  MR. FREIDIN: Madam Chair, I want to go  
25 back to the issue where I was unable to provide

1 references to transcripts and you'll recall that that  
2 inability to refer to the transcripts arose in relation  
3 to the subject matter of what gets approved when the  
4 undertaking gets approved.

5 And, firstly, I had said that Forests for  
6 Tomorrow had submitted that in a class environmental  
7 assessment the undertaking doesn't get approved, rather  
8 the environmental assessment gets approved, and I'll  
9 take you to those transcript references in a moment,  
10 and I apologize in that I had read one paragraph  
11 without carefully reading the second, and I will  
12 explain that in a moment.

13 But, more importantly, Mr. Lindgren  
14 advises that Forests for Tomorrow's position has always  
15 been that an undertaking gets approved at the end of  
16 this class environmental assessment and the dispute has  
17 been what the undertaking is.

18 And he advises that Forests for  
19 Tomorrow's position is that the undertaking which gets  
20 approved is the planning process, and you find that at  
21 Volume 401 page 68696 to 97.

22 I accept that's that is their position  
23 and you have my submissions why we disagree that the  
24 undertaking is only a planning process.

25 I would ask you to - if I could just have

1 a moment to read to you why I made the comment I did,  
2 the interpretation I did. At page 68697 of the  
3 transcript - nothing particular turns on this any  
4 longer, Madam Chair, but I wanted to advise you what  
5 led me to make the submission that I did initially -  
6 Mr. Lindgren had said:

7 "Mr. Freidin tried to be very careful  
8 when he was talking about this issue and  
9 so did Mr. Bisschop when he was talking  
10 about Class EAs during reply evidence.  
11 Bolt of those gentlemen talked about  
12 approving classes of undertakings as  
13 opposed to approving Class EAs which  
14 contained planning processes."

15 He goes on, indicated I slipped in my  
16 usage of language a couple of times, and he says:

17 "In FFT's view it is the Class EA that  
18 gets approved not the activities  
19 necessarily that fall within the  
20 enumerated class."

21 That's what led me to make the comment I  
22 did. Mr. Lindgren did however go on and say more,  
23 specifically, Madam Chair, Mr. Martel, it is the  
24 planning process in the Class EA that gets approved and  
25 there is no specific pre-approval for any particular

1 project in any particular area. So I just wanted to  
2 clear that up.

3 It's clear by reference to page 68709  
4 that the position of Forests for Tomorrow is that one  
5 must look at all of the requirements of Section 5(3) at  
6 the local level because on that page, 68709, Mr.  
7 Lindgren commented that if you accept the MNR position  
8 you will be giving the Ministry effectively carte  
9 blanche for all future timber management activities in  
10 every stand, in every unit, in every district without  
11 ever having MNR demonstrate a need for any of these  
12 activities at the project level.

13 Now, I'll comment in relation to that in  
14 a moment after I have addressed the situation which  
15 arose about my characterization of submissions made on  
16 behalf of the Coalition.

17 What I said was that OFAH had submitted  
18 that the activities aren't approved as a result of this  
19 EA because to do so would be granting the Proponent a  
20 carte blanche to carry out timber management without  
21 any bump-up provisions. That was the statement which  
22 was objected to.

23 No. 1, I shouldn't have used the word  
24 carte blanche, that was a word that Mr. Lindgren use,  
25 you'll see in a moment that the words Mr. O'Leary used

1 was fate accompi.

2 I probably should have said by granting  
3 the Proponent to carry out the activities, you wouldn't  
4 have - this is what their submission was, the  
5 submission of Mr. O'Leary in essence is, and I will  
6 demonstrate this through reference to the transcripts -  
7 is that if you approved our approach, the Ministry of  
8 Natural Resources' approach, that you wouldn't have the  
9 legal ability to impose bump-up provisions. That's the  
10 point that I wanted to address.

11 The comment about the characterization of  
12 MNR's position, firstly, page 69085. I'm not sure  
13 whether it was Mr. O'Leary or Mr. Hanna speaking. The  
14 statement is made:

15 "The Coalition has carefully examined  
16 the extreme positions being taken by  
17 various parties including the Proponent  
18 and on this basis and this example the  
19 Coalition submits the Proponent is taking  
20 another extreme position and that is the  
21 fundamental question of the need to  
22 harvest in all forest management units is  
23 a fate accompi once approval for this  
24 class environmental assessment is  
25 granted."

1                   Well, we don't agree with that and I'll  
2 indicate in a moment why. More particularly, in  
3 relation to this issue of bump-up, if you refer to  
4 Volume No. 1 of OFAH argument at page 15, paragraph 54  
5 states as follows:

6                   "Similarly the bump-up provisions in  
7 all Class EAs are inconsistent with the  
8 approval having been given to all  
9 projects within the class upon acceptance  
10 of the Class EA.

11                  "A bump-up under such circumstances  
12 would indicate that the Minister and/or  
13 the EA Board had withdrawn prior approval  
14 for a specific project.

15                  "It is noteworthy that once approval  
16 becomes final under Section 23 of the  
17 Environmental Assessment Act there is no  
18 provision for withdrawal of such approval  
19 under the Act.

20                  "Accordingly...", they go on and say:  
21                  "...withdrawal of approval for an  
22 individual project, if previously granted  
23 -- ", and I assume he's referring to  
24 granted by this Board:

25                  "...would be illegal." In effect, you

1 couldn't do it.

2 "This would be the exact effect of  
3 granting a bump-up request for an  
4 individual timber management plan if  
5 approval of the Timber Management Class  
6 EA means approval for individual timber  
7 management plans."

8 And similar comments were made at page  
9 69157 to 69159 where Mr. O'Leary refers in his view as  
10 to the purposes of class environmental assessment and  
11 he says, in part:

12 "The purpose is to proceed and obtain  
13 approval for a planning process which  
14 will avoid that duplication and  
15 repetition that I have referred to. He  
16 was talking about the duplication and  
17 repetition in relation to having to  
18 design a planning process.

19 "If MNR's terms and conditions are  
20 approved (which in effect means that the  
21 planning process level Section 5(3) of  
22 the Act does not need to be lived up to  
23 and its requirements), the Coalition  
24 submits that this would suggest that  
25 there would be no need for bump-up, that

1                   there had been approval already."

2                   The OFAH of course had taken the position  
3                   that the requirements of 5(3), all of them, apply at  
4                   the local level, but the point I wanted to make in  
5                   response to all of that is one which perhaps I could  
6                   have done without even referring to the transcript, and  
7                   I wish I just had done it that way.

8                   MR. MARTEL: So do I.

9                   MR. FREIDIN: The point really I was  
10                  trying to get to, and I will get to now, is actually a  
11                  very simple one and, that is, the Ministry of Natural  
12                  Resources does not believe that it's a proper  
13                  characterization of an approval of the undertaking of  
14                  timber management to say somehow that everything is a  
15                  fate accompli and suggest that there are sort of no  
16                  controls on how the Ministry of Natural Resources  
17                  operates at the local level or whether in fact it will  
18                  carry out timber management in an environmental  
19                  acceptable way.

20                  That obviously is not the case, there is  
21                  no fate accompli, there's no carte blanche. Approval  
22                  to proceed will be conditional in that it will be  
23                  subject to the Proponent meeting terms and conditions  
24                  of your approval, including following a planning  
25                  process designed and imposed by the Board.

1                   And for the reasons I've submitted, and  
2                   that planning process should not require the respondent  
3                   to in fact start from scratch or repeat or meet all of  
4                   the requirements of Section 5(3) all over again. So  
5                   that's where that was going.

6                   I want to refer to a portion of  
7                   transcripts at Volume 401 pages 68713 to 714, 713 to  
8                   714. This was a comment made by Mr. Lindgren in  
9                   argument regarding the views that certain members of  
10                  the public may have when they become involved in  
11                  planning at the local level after an approval if  
12                  they're confronted with being advised that the need for  
13                  the undertaking has been resolved somewhere else; i.e.,  
14                  in this class environmental assessment.

15                  Mr. Lindgren says - if I could just have  
16                  one moment, I want to see if I can shorten this. The  
17                  section that I would ask you to read is from page  
18                  68713. If you start on line 11, you read over to the  
19                  next page ending on line 14, that gives everything but  
20                  I don't want to take the time to read all of that now.  
21                  Starting on line 21, Mr. Lindgren says:

22                  "If the position of the Ministry of  
23                  Natural Resources in the future is going  
24                  to be: Well, we don't have to justify  
25                  the need for this particular project, we

1                   are going to build a road, we are going  
2                   to access a stand, and do you know why,  
3                   because something called the Class EA."

4                   And then he says:

5                   "Something you never even heard about  
6                   or probably participated in."

7                   He said:

8                   "Need has been documented at the  
9                   provincial level so we don't have to  
10                  look at it now and we are going to go  
11                  ahead. The best you can do is hope for  
12                  mitigation in the form of timing or in  
13                  the form of location."

14                  Madam Chair, to say that the Board should  
15                  somehow provide for an opportunity to consider need at  
16                  the local level because someone may come along and  
17                  say -- and be surprised and somehow be justified in  
18                  saying that's not fair because there's a thing called  
19                  the Class EA, is something I never even heard about or  
20                  participated in flies in the face of the whole reason  
21                  for having class environmental assessments.

22                  It disregards the public nature of this  
23                  class environmental assessment, it disregards the  
24                  numerous notices to the public in various forms, it  
25                  disregards the many community hearings that have been

1 held and the efforts made by the Board to ensure that  
2 all members of the public had full opportunity to make  
3 their views known to you, and it disregards the  
4 submissions made by some of the parties here.

5                   If they are to be accepted, such as Mr.  
6 Hanna, who says: We represent the main stream of the  
7 public or the main stream of northern Ontario, we have  
8 a large organization. Similar comments weren't made by  
9 Forests for Tomorrow, but we are aware of the  
10 environmental organizations of which they represent  
11 including the Federation of Ontario Naturalists which  
12 is a large organization with membership across the  
13 province.

14                  So I would ask you not to provide for an  
15 opportunity to re-examine need at the local level for  
16 the reasons suggested in those portions of the  
17 transcript.

18                  Changing to another subject matter, still  
19 staying with EA matters generally. In terms of this  
20 discussion about environmental assessment and what the  
21 Act means, what other lawyers might do and how keenly  
22 they will be awaiting your decision, Ms. Seaborn says  
23 that you can be as specific or general as you want to  
24 be, and I interpret her to say in terms of your  
25 interpretation of the legislation and that you

1 shouldn't feel that you have an obligation to go on and  
2 write extensively about the Environmental Assessment  
3 Act and what a proper interpretation of it is.

4 I would just like to comment that in a  
5 general sense your comment is correct, but that of  
6 course does not absolve the Board from its  
7 responsibility to provide the legal basis upon which  
8 your decision is made or to decide on all the legal  
9 issues raised which must be decided upon in order for  
10 you to render a decision.

11 Ms. Seaborn also made another comment  
12 along these lines and she said that you should link  
13 decisions to the facts with some precision, and then  
14 she said, but you are not bound to do that.

15 And my response and submission to you on  
16 that matter is - and I will be brief - that you are  
17 bound to do that to the extent necessary to satisfy the  
18 basic rules of natural justice which would expect  
19 parties to know, after the case, the reasons for your  
20 decision, why you came to your conclusions,  
21 particularly why certain positions were rejected or not  
22 accepted by you.

23 And the last subject matter in this vein  
24 relates to Ms. Seaborn's comments that your ruling will  
25 not be binding on other panels of the Environmental

1                   Assessment Board but will be persuasive.

2                   She indicated that other boards may agree  
3                   with your decision or your interpretation of the Act,  
4                   they may disagree with it and, in some cases, they may  
5                   basically just distinguish the cases before them from  
6                   this one and say the facts are different, the law isn't  
7                   necessarily applied, doesn't mean the same thing in  
8                   these circumstances. MNR agrees with those general  
9                   propositions.

10                  I would suggest to you that the same  
11                  principle applies to you on how you can deal with other  
12                  decisions of the Environmental Assessment Board or the  
13                  Minister, and I bring that to your attention because  
14                  you have been asked to look at what has happened in  
15                  other class environmental assessments in terms of what  
16                  has been done with 5(3) and what has been done with  
17                  looking at purpose.

18                  Those decisions are not binding on you  
19                  but they are of persuasive value. You examine those  
20                  issues having regard to the Act and come to your own  
21                  views. I would note, however, that you are bound to  
22                  follow court decisions unless there is a proper basis  
23                  for distinguishing them.

24                  The very last item on environmental  
25                  assessment matters, Madam Chair, that I want to address

1       is to remind the Board of the great amount of  
2       experience that Mr. Bisschop has had, not only in  
3       timber management planning, but in environmental  
4       assessment.

5                   Mr. Bisschop, based on the evidence, has  
6       been involved in environmental assessments since 1973,  
7       during the years leading up to the environmental  
8       assessment and that he has held positions doing  
9       environmental assessment work for two of the largest  
10      proponents in this province since that time, Ontario  
11      Hydro and the Ministry of Natural Resources; that he is  
12      presently employed not all by himself in the Ministry  
13      of Natural Resources but as part of the Planning and  
14      Environmental Assessment Branch which is a branch which  
15      deals with numerous environmental assessments - as Ms.  
16      Dahl's branch does.

17                  And I would ask you when you are  
18       assessing the weight you should give to Mr. Bisschop's  
19       evidence regarding environmental assessment, what good  
20       environmental planning is, whether environmental  
21       assessment requires environmental assessment-type  
22       analysis for everything, for every matter which is  
23       discussed, that you carefully review his resume which  
24       has been marked as Exhibit 813A.

25                  And I'm not going to take the time to

1 review the numerous matters that Mr. Bisschop had been  
2 involved in since 1973 in relation to environmental  
3 assessment, not timber management, he's been involved  
4 in timber management but in relation to how  
5 environmental assessment applies to it.

6 He has appeared before the Consolidated  
7 Hearings Board on one Hydro case and was qualified to  
8 give evidence in relation to environmental assessment.  
9 He in fact was involved in the development and  
10 application of the environmental planning method used  
11 by Ontario Hydro since 1974 in all transmission  
12 planning studies. And I'll say no more.

13 And that gets me to the end of EA matters  
14 and I would then move on to the secondary, the use of  
15 natural and artificial regeneration methods and if I  
16 might just have one moment I'd like Mr. Kennedy up here  
17 on this matter. So if I can just have a moment.

18 Madam Chair, Mr. Martel, the next topic  
19 is the use of natural and artificial regeneration.  
20 You'll see the outline, it says I'm going to address  
21 that in relation to three subject matters: The  
22 importance of site, very briefly discussing the  
23 implications of Forests for Tomorrow's term and  
24 condition 28(i)(h) which requires the use of net  
25 present value calculations, and some references to the

1 costing exercise, particularly to submissions by  
2 Forests for Tomorrow made by argument that because they  
3 changed their silvicultural prescriptions that somehow  
4 the costing exercise is of no value to you.

5 MNR does not agree with that proposition  
6 and will be explaining to you why that is the case.

7 In terms of the first matter, importance  
8 of site, you have heard that MNR uses various  
9 treatments on various sites. We described those in  
10 Panels 10 through 12. The reason that that is done is  
11 to meet silvicultural objectives.

12 There have been suggestions, particularly  
13 in argument, that those techniques are interchangeable  
14 and that they are not, as I characterize them in my  
15 argument-in-chief, that they're not always true  
16 alternatives.

17 The suggestion has been made, and this  
18 really is the primary matter I want to address, a  
19 suggestion has been made that artificial and natural  
20 regeneration are somehow interchangeable and that as a  
21 result the investment in artificial is not warranted.

22 What I'm referring to primarily is the  
23 argument by Forests for Tomorrow where they review the  
24 results of stocking assessments as described in Exhibit  
25 552 which were results from a number of Crown

1 management units, I believe nine that were presented by  
2 Mr. Waito and Mr. Hynard in MNR Panel No. 11.

3 You will recall that in referring to  
4 Exhibit 552E and G, Ms. Swenarchuk for Forests for  
5 Tomorrow have referred you to results where higher  
6 percentages of stocking were achieved on naturally  
7 regenerated sites.

8 In fact on 552E for the conifer working  
9 group 87 per cent of the area naturally regenerated was  
10 greater than 40, and 7 per cent of the area treated  
11 artificially was greater than 40 per cent stocking.

12 And on 552G in relation to free to grow,  
13 71 per cent of the area treated naturally was free to  
14 grow and 69 per cent of the area treated artificially  
15 was free to grow.

16 The reasons those particular numbers and  
17 statistics were put before you was to address the  
18 question of whether artificial regeneration was  
19 superior to natural regeneration or whether the results  
20 of artificial regeneration were sufficiently better  
21 than natural regeneration so as to justify the  
22 additional cost.

23 It is my submission, Madam Chair, Mr.  
24 Martel, that making the comparisons between  
25 artificially regenerated stands and naturally

1 regenerated stands in that exhibit is of no assistance,  
2 I repeat, of no assistance in answering the question as  
3 to whether in fact natural is as good, better or worse  
4 than artificial regeneration or whether artificial  
5 regeneration is required on many sites in the area of  
6 the undertaking.

7 I submit to you that the comparison or a  
8 comparison of stocking or free to grow results on as  
9 between artificial and natural regeneration is only  
10 valid if one is comparing results on the same site.

11 You have heard from many witnesses that  
12 some but limited sites can be regenerated very  
13 successfully or successfully using natural regeneration  
14 methods. Those matters were addressed in some detail  
15 in our Chapter 1.9 and 1.11.1.

16 You have also heard from numerous  
17 witnesses that rich productive upland mixed wood sites  
18 are sites where severe competition occurs and if you  
19 want to regenerate conifer you have to plant in order  
20 to give conifer a jump start on the competing species.

21 On those sites the evidence is that  
22 without planting it is expected that conifer  
23 regeneration would be extremely difficult to achieve  
24 and conifer stocking, as a measure, would be extremely  
25 low. If you accept that evidence on those kind of

1 sites, artificial has significant advantages over  
2 natural regeneration.

3 Now, Forests for Tomorrow -- I would like  
4 to direct you to a couple of paragraphs of Forests for  
5 Tomorrow's argument and they are paragraph 551 and 554.  
6 551 appears at page 224 of FFT's argument.

7 MADAM CHAIR: Did you say 551, Mr.  
8 Freidin?

9 MR. FREIDIN: Yes, Volume 2. I'm going  
10 to take a moment to read those two paragraphs because  
11 it's those that give me the springboard for a number of  
12 submissions. In 551 FFT states:

13 "MNR witnesses have conceded that the  
14 maximum investment (planting) does not  
15 necessarily lead to better stocking  
16 results, rather Ron Waito takes the  
17 position that without use of artificial  
18 regeneration foresters will not get  
19 conifer on the site (e.g. jack pine on  
20 richer sites)."

21 It seems to be in agreement with what  
22 I've just said. 554 states:

23 "Though FFT specifically asked in  
24 Interrogatory No. 5 to MNR Panel 11 for  
25 quantitative information to support the

1 statement that tree planting is generally  
2 acknowledged to offer the best  
3 opportunity for success in achieving  
4 prescribed conifer regeneration levels,  
5 no quantitative evidence was provided in  
6 response and according to Mr. Waito none  
7 is available."

8 And then they quote:

9 "MR. WAITO: It is just based on what  
10 has been my common belief as a forester  
11 and I think what has been the common  
12 belief or what is the common belief of  
13 most foresters who are practising  
14 forestry in Ontario."

15 What did the foresters tell you about the  
16 usefulness of comparing stocking and free to grow  
17 results? I've indicated to you and characterized what  
18 their evidence is and have referred you to our Chapter  
19 1.9 and 1.11.1.

20 But because this is such an important  
21 matter, Madam Chair, Mr. Martel, I do believe that it  
22 is a subject worthy of referring you to some specific  
23 portions of the transcript in order to support the  
24 proposition that I have made about the importance of  
25 artificial on certain sites and the incorrectness, if I

1 can use that word, of comparing stocking and free to  
2 grow results from different site types when you're  
3 trying to look at natural versus artificial.

4                         The first quote comes from Volume 98 on  
5 page 16488 to 16490 and this is a question from Mr.  
6 Martel and it arose out of this portion of Exhibit 552  
7 where it indicated that 69 per cent stocking had been  
8 obtained on artificially regenerated sites and 71 per  
9 cent had been obtained on naturally regenerated sites.

10                       And commencing at line 15, Mr. Martel,  
11 you asked:

12                       "If the 69 per cent of the area  
13 treated artificially is free to grow why  
14 for the sake of 2 per cent would you  
15 treat?"

16                       Mr. Waito, and I'm only taking portions  
17 of the transcript, I'm not reading every word. I have  
18 given you the pages where you'll find all the words.

19 Mr. Waito says:

20                       "It is not really possible to compare  
21 the 69 per cent and the 71 per cent  
22 because they are on different site types  
23 and they are on different areas."

24 Ms. Blastorah asked:

25                       "The 69 per cent, the area that was

1                   treated artificially, would those site  
2                   types all be equally appropriate for  
3                   either artificial or natural or would  
4                   there be included in there some  
5                   site types that would be inappropriate  
6                   for natural?

7                   "A. There would be areas that would  
8                   be inappropriate for natural."

9                   He goes on:

10                  "You can't compare the two areas  
11                  because they are on different sites and  
12                  they are different areas."

13                  Mr. Hynard who was on that panel a few  
14                  pages later in the transcript at page 16492 sort of  
15                  interjected. It seemed that this question for me, Mr.  
16                  Martel, was on his mind and he had been thinking about  
17                  it for a couple pages.

18                  And he said:

19                  "With respect to your question, Mr.  
20                  Martel, which was the question of  
21                  comparison between natural and artificial  
22                  methods and how they appeared virtually  
23                  the same or the natural methods in fact  
24                  showed higher stocking levels overall."

25                  He wanted to address that question of

1 yours. He says:

2 "You will recall in my evidence this  
3 morning that I said that natural methods  
4 were limited by site type, and I presume  
5 that these natural methods shown here  
6 were conducted on those site types and  
7 they showed a good success rate.

8 "Those same natural methods for  
9 preferred conifer species, if conducted  
10 on tougher sites, those tricky sites that  
11 I described, would produce absolutely  
12 dismal results, and so that's the reason  
13 that they can't be directly compared."

14 Now, Mr. Hynard said:

15 "I'm going to be going on and talking  
16 about Forests for Tomorrow's continued  
17 criticism notwithstanding that kind of  
18 comment because of the lack of what they  
19 refer to as quantitative data."

20 Other portions of the transcript that you  
21 should look at, that I would direct you to, are Volume  
22 106 page 17787 to 17789, that is evidence of Mr. Waito  
23 to the same effect. I only want to read you, it's five  
24 or six lines, from that entire portion. They appear on  
25 page 17787 lines 14 to 21 where Mr. Waito says, this is

1       in cross-examination by Forests for Tomorrow:

2                 "I think the important difference  
3                 between artificial and natural is not so  
4                 much you get all hung up on volume but on  
5                 certain site types under certain  
6                 conditions. It has been my experience  
7                 that the only way you are going to get  
8                 conifer there, regardless of what the  
9                 volume is, is by practising artificial  
10                regeneration techniques."

11               If I could just have one moment. In that  
12               same volume, Volume 106 commencing on page 17791 to 96  
13               there is a further discussion regarding this matter  
14               where Mr. Hynard points out to Forests for Tomorrow  
15               that when you are looking at different sites, good ones  
16               where there's lots of competition and poorer ones where  
17               there is not lots of competition, and the type of  
18               stocking you could achieve, he said, and I quote:

19                 "It is not as simple as if you  
20                 spend more money shouldn't you get higher  
21                 stocking."

22               He makes that comment at page 17795, and  
23               on page 17795 at the very bottom, starting on line 24  
24               and going over to the next page down to line 15, we  
25               have the cross-examination which led to the statement

1       in Forests for Tomorrow's argument that you found in  
2       paragraph 551 about planting doesn't necessarily lead  
3       to better stocking results.

4                   There wasn't a cite provided in Forests  
5       for Tomorrow's argument so that particular citation was  
6       located and, in my submission, it has been taken out of  
7       context. Ms. Swenarchuk's question:

8                   "So then I take it the evidence of the  
9       panel is that -- or just following from  
10      what you said, Mr. Hynard, we should not  
11      expect that maximum investment which will  
12      usually mean planting can reasonably lead  
13      or be expected to lead to better stocking  
14      results?

15                  Mr. Hynard:

16                  "Yes, I think that's fair. I think  
17      that it doesn't necessarily lead to  
18      higher stocking results."

19                  Forests for Tomorrow just stopped there.  
20      That was the point that they were making. If you read  
21      the next paragraph:

22                  "And you will recall...", this wasn't  
23      reproduced:

24                  "...in the results that Mr. Waito  
25      presented from Hearst it showed very,

1                   very high stocking levels of black spruce  
2                   natural regeneration and those were on  
3                   lowland sites of mediocre productivity.

4                   Very high stocking standards, much higher  
5                   than you could obtain by planting trees  
6                   on a rich and difficult site."

7                   I'm suggesting to you that Forests for  
8                   Tomorrow, notwithstanding the evidence of these  
9                   foresters, in this particular case have only told part  
10                  of the story, they have emphasized statements such as  
11                  'planting does not necessarily lead to better stocking  
12                  results'. Well, without saying more, in my respectful  
13                  submission, it takes it out of context and conveys an  
14                  inaccurate message to the Board.

15                  Now, I want to deal with Forests for  
16                  Tomorrow's cross-examination and their argument that no  
17                  quantitative data was in fact presented by these  
18                  foresters or by any foresters to support or justify the  
19                  statement that on some sites you have to use  
20                  artificial, that if you use natural on some of those  
21                  tricky sites your results will be dismal.

22                  And they are suggesting to you, Madam  
23                  Chair, Mr. Martel, that without that quantitative data  
24                  you should in some way not accept the evidence of those  
25                  foresters that those are the facts.

1                   And I would submit to both of you as  
2 strongly as I can that the lack of quantitative data,  
3 assuming you find that there is a lack of quantitative  
4 data, does not mean in any way that there is no  
5 evidence of the fact that on some sites artificial  
6 regeneration is necessary in order to obtain acceptable  
7 levels of conifer regeneration.

8                   As Mr. Greenwood pointed out in Volume  
9 107 at pages 17939 to 17942, he's saying the only way  
10 you would have quantitative data of the type that was  
11 being referred to by counsel for Forests for Tomorrow  
12 on the cross-examination was to take one of those  
13 tricky sites and plant part of it and let part of it  
14 renew naturally and do that across a whole number of  
15 sites and come forth and put forth the quantitative  
16 data.

17                  In my submission, the evidence is such  
18 that it would be unreasonable, it is not necessary to  
19 do that kind of, or to provide that kind of data to  
20 this Board for the Board to accept the evidence of the  
21 many, many foresters who have described to you the  
22 difficulties about competition on these rich sites and  
23 the distinctive advantages of artificial regeneration  
24 in those circumstances.

25                  During her submissions to you, Ms.

1       Swenarchuk said that MNR is not providing you with  
2       comprehensive data about regeneration results in  
3       Ontario, nor comparative data regarding success rates  
4       for artificial versus natural regeneration, or a  
5       breakdown of the techniques between the two. Then she  
6       went on and makes this interesting observation.

7                 "Nevertheless, conventional wisdom is  
8                 that you get better results from  
9                 artificially regenerated sites."

10               Now, firstly, I have three things I want  
11       to say about that comment.

12               MR. MARTEL: That last comment?

13               MR. FREIDIN: Conventional wisdom is that  
14       you get better results from artificially regenerated  
15       sites.

16               I have three comments I would like to  
17       make. Firstly, she has mischaracterized the  
18       conventional wisdom somewhat because the conventional  
19       wisdom is that on certain sites in certain conditions  
20       artificial will provide better results than natural,  
21       and in some of those situations only artificial  
22       regeneration will give you acceptable results.

23               Secondly, having said that, I submit that  
24       conventional wisdom based on the professional judgment  
25       and experience of the foresters which appeared before

1 you is a reasonable basis to make a finding of fact in  
2 relation to this subject matter of artificial verus  
3 natural upon which it would be reasonable for you to  
4 base your decision.

5                   The third one is sort of tied up with  
6 that, that it is - and a repeat of what I said before -  
7 it is not necessary that conventional wisdom be  
8 supported by quantitative data either to be evidence or  
9 to be reliable evidence.

10                  There was some discussion about the 40  
11 per cent minimum stocking standard during Forests for  
12 Tomorrow's argument and the suggestion was that 40 per  
13 cent somehow was called a minimum and that meeting that  
14 was really an indication of unacceptable timber  
15 management.

16                  I would just ask you to refer in that  
17 regard to Volume 107 pages 17921 to 28. That is part  
18 of the cross-examination of Mr. Waito again in relation  
19 to this Exhibit 552E where they were talking about  
20 comparing stocking results between artificial and  
21 naturally regenerating stands.

22                  Again I will only highlight for you a  
23 portion of that. The portion that I'm going to  
24 highlight commences on page 17923 at line 23 and runs  
25 over to page 17925 line 20. Basically at the beginning

1 of that it just sets the stage that what they're  
2 talking about is Exhibit 552E, and Mr. Waito says, and  
3 this is cross-examination by Ms. Swenarchuk:

4 "The important number is the 40 per  
5 cent.

6 "MS. SWENARCHUK: Q. Well, are you  
7 satisfied as a professional, Mr. Waito,  
8 when you are conducting regeneration  
9 processes to consistently obtain only the  
10 minimum acceptable standard?

11 "MR. WAITO: A. I am satisfied as  
12 a professional if I achieve the minimum.  
13 I actually don't particularly like the  
14 term minimum because, as I tried to  
15 portray or describe in Exhibit 551, that  
16 that minimum standard, that minimum  
17 figure actually represents a fairly high  
18 standard of failure, if I can  
19 characterize it that way.

20 "So if we were consistently hitting 40  
21 per cent we are meeting our objective."

22 She goes on:

23 "Are you in a position to assure us  
24 that the consistent achievement of the  
25 minimum stocking level is going to

1                   satisfy the wood supply requirements of  
2                   the forest production policy?

3                   "A. Well, I'm not in a position to  
4                   assure anything. I think the standards  
5                   have been developed on the basis of an  
6                   understanding of what 40 per cent  
7                   stocking describes. As Mr. Hynard said  
8                   yesterday, 40 per cent stocking...", and  
9                   this is probably the most important part:

10                  "...40 per cent stocking will ensure that  
11                  that working group is maintained and will  
12                  produce a successfully stocked and  
13                  regenerated stand."

14                  And again this issue is addressed in more  
15                  detail in our Chapter 1.9 and 1.11.1.

16                  Again on this issue of artificial versus  
17                  natural and whether artificial is superior, that being  
18                  the way it was characterized by Forests for Tomorrow in  
19                  their argument, the submission was made by Forests for  
20                  Tomorrow that the only long-term plantation results are  
21                  SOARS and Mr. Marek's plantations.

22                  And, having said that, Forests for  
23                  Tomorrow have suggested that the evidence regarding  
24                  those areas demonstrate that artificial regeneration  
25                  does not produce results which merit the investment in

1       artificial regeneration.

2                   Two responses. Firstly in relation to  
3       SOARS. SOARS 1 and SOARS 2 looked at silvicultural  
4       practices which took place in the 1960s and early  
5       1970s. I believe Ms. Cronk gave you the reference for  
6       SOARS No. 1. I apologize I don't have it here for you  
7       now. SOARS 2, which is Exhibit 553, states on page 2,  
8       and I quote:

9                   "The data for this study relates only  
10                  to planting projects of 1976 and earlier  
11                  and seeding projects of 1971 and  
12                  earlier."

13                  And you have Ms. Cronk's submissions and  
14       you are aware of the evidence regarding the  
15       improvements which have been made to silvicultural  
16       practices since those years.

17                  In relation to Mr. Marek's plantations,  
18       the suggestion has been left with you that Mr. Marek's  
19       plantations have failed, he said they had failed. And  
20       because those plantations that he established or  
21       attempted to establish -- in fact, I shouldn't say  
22       attempted, which he did establish, were established  
23       long enough ago that now that he has come to the  
24       conclusion that they have failed you should accept the  
25       proposition that artificial regeneration isn't worth

1           the investment.

2                         I would ask you to look at a number of  
3                         portions of the transcript which will demonstrate that  
4                         when Mr. Marek gave evidence about his plantations  
5                         failing he was talking about those monoculture spruce  
6                         plantations that he was attempting to establish in the  
7                         Limestone Lake and Tyrol Lake area in the Lake Nipigon  
8                         area.

9                         Those were areas where he was expecting a  
10                         considerable increase in the volume over which one  
11                         could obtain by practising artificial regeneration the  
12                         way it's done now. And, therefore, when he said they  
13                         had failed, they hadn't lived up to his extremely high  
14                         expectations of what he thought he should get from  
15                         carrying out European-style intensive management.

16                         And you have heard Mr. Marek say quite  
17                         clearly that the kind of intensive management that he  
18                         talked about, that European-style where you try to  
19                         get -- that he tried on those Limestone Lake, Tyrol  
20                         Lake plantations, was much more intensive than what the  
21                         Ministry of Natural Resources and the Industry referred  
22                         to when they say they practise intensive management on  
23                         some sites.

24                         You will see from a review of the  
25                         transcript -- I don't think I need go on any further.

1 I will give you the references. And I apologize, I  
2 don't have the volume numbers, but pages 46588 to 91 is  
3 a cross-examination of Mr. Marek by Ms. Cronk and, in  
4 particular, 46591 where the question was:

5 "And is it in that context that you  
6 indicate that you were not satisfied with  
7 your tending efforts on Limestone Lake?

8 "A. That's correct.

9 "Q. And Tyrol Lake.

10 "A. Correct."

11 And it was after going through these  
12 particular monocultures. 46650 to 46652 you'll see  
13 that, as I would characterize it, perfection was the  
14 benchmark against which Mr. Marek was describing  
15 whether he failed or he succeeded.

16 And you should also look at the  
17 re-examination of Mr. Marek by his own counsel, Ms.  
18 Swenarchuk, at 48212 to 213 where in re-examination he,  
19 in my respectful submission, supports the proposition  
20 which I've just made to you.

21 Can I just have one moment, Madam Chair.  
22 I would like to move on to the next subject matter  
23 which is on the list here, net present value, NPV.  
24 And these submissions will, I assure you, be brief,  
25 although the discussions and the wranglings about them

1 were repetitive and long.

9                         "MS. SWENARCHUK: We are looking for a  
10                         change in emphasis. We have not said  
11                         there will be no artificial regeneration,  
12                         but more deliberate treated areas for  
13                         natural."

24 "When identifying or evaluating or  
25 selecting silvicultural ground rules, MNR

1           shall ensure that approved silvicultural  
2           prescriptions will...", then it says:

3           "....require the use of extensive  
4           silviculture on all sites and stands  
5           capable of natural regeneration of  
6           primary coniferous species."

7           Here's the important part:

8           "However, intensive silviculture may  
9           be used on sites where intensive  
10          silviculture is economically feasible in  
11          that present net worth of all direct  
12          costs and returns is positive."

13           S this particular term and condition is  
14          addressed in MNR's argument in Chapter 1.11 at page 344  
15          to 348. You will note, if you just read the term and  
16          condition, the only circumstance in which intensive  
17          silviculture is permitted is where present net worth of  
18          all direct cost and returns is positive. That's what  
19          it says. In my submission there is no question that  
20          that is what it says.

21           The evidence of Dr. Muller called in  
22          Forests for Tomorrow's Panel 7 stated that net present  
23          value should not be the sole decision-making criteria.

24           You will find the references for all of  
25          this in those sections of Chapter 1.11 that I referred

1 you to. As I have stated, Forests for Tomorrow's term  
2 and condition 28(i)(h) does make it the sole  
3 decision-making criteria.

4 And you will recall the evidence both in  
5 response to questions of you, Madam Chair, and maybe  
6 Mr. Martel as well, of Mr. Benson and the evidence of  
7 Mr. Hynard that there would be very, very few cases  
8 where one would get a positive net present value when  
9 you are assessing artificial regeneration being used on  
10 a site and, therefore, there would be very few cases  
11 where artificial regeneration would be permitted as a  
12 result of the application of this term and condition.

13 And although the citations are found in  
14 Chapter 1.11, I will refer you to the more pertinent  
15 ones now. Mr. Benson at Volume 280, page 50221 to 222;  
16 and Mr. Hynard at Volume 78, page 13074 to 79; and also  
17 Exhibit 603C which was one of the witness statements in  
18 Panel No. 12 I believe, pages 16 and 14.

19 So, Madam Chair, I'm obviously, because  
20 of the submissions I've made about artificial versus  
21 natural, asking you to reject that particular term and  
22 condition and by not mentioning the other ones I'm not  
23 saying you shouldn't do the same with those, but that  
24 one makes the practice of silviculture the way it's  
25 practised in this province almost an impossibility.

1                   Madam Chair, I'm going to be moving on to  
2 the issue of the costing exercise. I wonder whether  
3 this is an appropriate time for a break.

4                   That will take about 15 or 20 minutes.

5                   MADAM CHAIR: That's fine. Let's take  
6 our afternoon break.

7                   ---On recessing at 1:35 p.m.

8                   ---On resuming at 2:00 p.m.

9                   MADAM CHAIR: Please go ahead, Mr.  
10 Freidin.

11                  MR. FREIDIN: Thank you. The last item  
12 in relation to natural and artificial regeneration  
13 methods is the costing exercise, if you recall, was an  
14 exercise which involved not just Ministry of Natural  
15 Resources but a number of the other full-time parties  
16 including Forests for Tomorrow.

17                  The reason I wanted to speak about this  
18 was because Ms. Swenarchuk suggested in her  
19 submissions, and you see this in their written argument  
20 at page 230 at paragraph 571, that they're suggesting  
21 that the results of the costing exercise is really of  
22 no assistance to the Board any longer for two reasons.

23                  The first reason they give is that their  
24 silvicultural prescriptions have been significantly  
25 changed from those utilized in the costing exercise and

1       that both parts of the exercise are based on  
2       questionable data and modeling techniques that make the  
3       forecasts invalid.

4                     You'll recall it's in relation to that  
5       second matter that they're relying on the comments made  
6       by Mr. Benson in that portion of the report where the  
7       committee members had an opportunity to indicate their  
8       personal views on certain matters.

9                     It's the submission of the Ministry of  
10      Natural Resources that an examination of the material  
11      produced by that group, the group that did the costing  
12      exercise, shows quite clearly that the main ingredients  
13      in the raised costs of the FFT scenario over the  
14      present practice scenario remain, or will remain  
15      notwithstanding the changes to FFT's silvicultural  
16      prescriptions.

17                   I will refer you to specific portions of  
18      the terms and conditions and indicate to you -- well,  
19      first of all, before I do that, I believe the three  
20      main ingredients which led to the raised costs in the  
21      first place were: No. 1, the elimination of the aerial  
22      application of herbicide, and the committee did provide  
23      for some ground applications of herbicides; secondly,  
24      increased road and layout costs, especially that  
25      associated with the strip cutting in black spruce; and,

1       thirdly, a requirement to use tree-length logging on  
2       sites where the depth of soil is less than one metre.

3                  You'll find the references to those  
4       ingredients and how they were addressed in a brief way  
5       on the following pages of the costing exercise which is  
6       Exhibit 2226, in relation to the three items I just  
7       gave you, they would be pages 53, 46, and 48 to 49  
8       respectively.

9                  I don't think we have to go to Forests  
10      for Tomorrow's terms and conditions, but Forests for  
11      Tomorrow's term and condition 96 indicates that with  
12      respect to the aerial application of herbicides there  
13      is no change in the FFT proposal.

14                  Term and condition No. 30 indicates that  
15      with respect to full-tree harvest there is no change in  
16      the FFT proposals.

17                  FFT condition 69 still requires marking  
18      of all boundaries, so extra layout costs of some nature  
19      would still be incurred.

20                  And FFT condition 28 has removed the  
21      requirement for strip cutting of black spruce and,  
22      therefore, one of the items that they have taken out  
23      will affect one of the costs which was considered and  
24      that was the road costs.

25                  You will recall the evidence in that

1 regard was the committee came to the -- Well, I don't  
2 think I want to take the time to characterize  
3 everything the committee said.

4 I would submit, however, that they would  
5 still require many small clearcuts, FFT's silvicultural  
6 prescriptions. You recall that they have a hundred  
7 hectare limit on the size of clearcuts, they're  
8 providing for a range of small cuts, the reporting  
9 requirements if you're going to exceed the hundred  
10 hectares.

11 It's my submission that with the smaller  
12 cuts some of the extra road costs that are associated  
13 with the smaller strip cuts would still be incurred but  
14 not as much, I can't tell you how much in the  
15 circumstances in which the change occurred to the term  
16 and condition.

17 I would submit to you that the best  
18 evidence you have about the cost associated with the  
19 FFT regime is still found in the costing exercise, and  
20 I would refer you to comments by Mr. Waito at pages 64  
21 to 65 and page 67 of Exhibit 2226 where he speaks about  
22 the reasonableness or the degree of confidence he had  
23 as to the manner in which they went about costing the  
24 various items.

25 In terms of the issue of roads, on page

1       230 of their argument, paragraph 523 FFT have said that  
2       the committee did not determine road maintenance and  
3       road construction costs.

4                   That Madam Chair, Mr. Martel, is not  
5       correct. The committee did estimate the road  
6       construction costs. They did not make an estimate of  
7       the cost of maintenance and reconstruction. You will  
8       find in Volume 388, pages 66890 to 91 the evidence in  
9       support of that proposition.

10                  I would also direct your attention to the  
11       costing exercise at pages 17 to 18 in that regard.  
12       The matter dealt with at that latter portion was in  
13       relation to the maintenance and reconstruction costs.

14                  In relation to the issue of road  
15       maintenance and reconstruction costs you have the  
16       evidence of Mr. Waito, not the committee, but Mr. Waito  
17       who indicated that in his view the cost of the  
18       maintenance and reconstruction are likely highly under  
19       the FFT regime.

20                  He stated, if you have more roads you  
21       will have to maintain more roads; if you have to use  
22       roads longer, you will have to do more reconstruction.  
23       The committee could not come up with an agreed cost, so  
24       they did not factor this item into the equation.

25                  You recall there was an agreement that

1       the roads under the FFT regime would have to be built  
2       in half the time for the same area as it would have to  
3       be constructed using present practice because of the  
4       smaller cuts and breaking up the cuts.

5                   And Mr. Waito's evidence was that that  
6       would result in higher cost of maintenance and  
7       reconstruction. So you'll find his full answer in that  
8       regard at Volume 388, pages 66963 to 964.

9                   It's interesting to note in *Forests for  
10      Tomorrow's written evidence* page 231, paragraph 573  
11     they seem to agree with this proposition with regards  
12     to roads because they state, and I quote:

13                  "The possibility of larger cuts was  
14       not factored into this costing exercise.  
15                  If larger cuts were allowed costs,  
16       including the road costs under the FFT  
17       regime, would be reduced."

18                  Ms. Swenarchuk was critical of the  
19       costing exercise because one of the reports that was  
20       relied upon by the committee was the Ketchinson report,  
21       which was a report dealing with road construction and  
22       it was done in the late 1970s.

23                  The criticisms in that regard can be  
24       found in the written argument of FFF at page 231,  
25       paragraph 576. You will also find it in the transcript

1 out of the oral argument of FFT at Volume 402, page  
2 68901, and at that particular portion of the transcript  
3 Ms. Swenarchuk stated:

4                   "It's the position of Forests for  
5 Tomorrow that the Board is entitled to  
6 draw an inference regarding the party's  
7 failure to produce such important  
8 evidence."

9                   She's talking about more up-to-date  
10 evidence than the late 1970s in the Ketchinson report.

11 She said:

12                   "It's the position of FFT that the  
13 Board is entitled to draw an inference  
14 regarding the party's failure to produce  
15 such important evidence and, had it been  
16 produced, it would not have supported  
17 their position; that is, the position  
18 that modified cutting raises wood costs."

19                   She's asking you to do what often happens  
20 in some cases, sort of a legal principle: If you don't  
21 call some evidence which would probably be favourable  
22 somehow that the court should take an adverse inference  
23 and say: Well, obviously, if you would have called it  
24 it would have been against you. You would have called  
25 it otherwise. Well, MNR submits that the Board is not

1           entitled to draw any such inference.

2           Firstly, Mr. Lindgren was asked directly  
3           about the Ketchinson study by Mr. Lindgren in Volume --  
4           I'm sorry Mr. Waito was asked by Mr. Lindgren. If it  
5           was Lindgren asking Lindgren the answer would be right  
6           every time.

7           Transcript Volume 388, page 66896, Mr.  
8           Lindgren asked Mr. Waito:

9           "It is my understanding that the  
10          Ketchinson work has been criticized as  
11          being old and too high. Have you heard  
12          that criticism?

13          "A. No, I have not."

14          Just stopping there, we have a suggestion  
15          from Mr. Lindgren to that effect. The only evidence  
16          that you have is that no one is aware of such  
17          criticism. Mr. Waito was on the committee and he says  
18          he has not heard this criticism before.

19          If the Board is to draw any inferences  
20          they might note that Mr. Lindgren did not ask Mr. Waito  
21          whether MNR was asked to produce more up-to-date  
22          information.

23          So what did the committee actually say  
24          about this item, this Ketchinson study. I want to make  
25          three points.

1                   Firstly, when they came to use the  
2 Ketchinson study which set out a range between \$98 and  
3 \$383, leaving aside the pennies for the extra cost  
4 associated with the strip cutting, they chose the  
5 mid-range of \$180, they didn't use the high number,  
6 that's No. 1.

7                   No. 2, Mr. Benson was given the  
8 opportunity to make certain comments and he did, but  
9 his comments do not say that the information in the  
10 Ketchinson study was old and too high as suggested by  
11 Mr. Lindgren to Mr. Waito.

12                  And, thirdly, I think it's common sense  
13 to suggest that there are very few things that cost  
14 less now than they did in 1979. If the Board is to  
15 draw any inferences you should draw the inference that  
16 those costs would be higher not lower.

17                  Now, there was an associated criticism by  
18 Forests for Tomorrow, which you will find on page 231  
19 of their written argument at paragraph 575, and that is  
20 that a figure of \$90 had been used to pay at least one  
21 FMA holder to compensate them for the extra cost  
22 associated with strip cutting and the committee used  
23 180. So the suggestion was: Well, you're not being  
24 fair to Forests for Tomorrow, you picked the middle  
25 range, 180, but you only paid \$90 when you were

1 compensating an FMA holder.

2 Well, again, I think that takes things a  
3 little out of context and I would refer you to Mr.  
4 Waito's evidence in relation to that particular  
5 criticism found at Volume 388, page 66897 where he  
6 indicated that the \$90 figure was not intended to cover  
7 the cost of road construction, rather it was intended  
8 to cover the cost of some layout and some other costs.  
9 So the number was lower because it didn't include the  
10 same work.

11 The next area that FFT are critical of is  
12 found in paragraph 578 of their argument where they  
13 make the comment as follows:

14 "The cost was not considered or  
15 modelled as part of the wood supply  
16 exercise."

17 And Mr. Waito's statement to the effect  
18 that the average cost under FFT scenario 1 would be 20  
19 per cent greater and a hundred per cent greater under  
20 scenario 2 are his own and not those of the committee.

21 It is true that the evidence regarding  
22 the percentages by which the various scenarios would  
23 differ was the personal comments of Mr. Waito, however,  
24 the statement that:

25 "The cost was not considered or

1                   modelled as part of the wood supply  
2                   exercise." is wrong.

3                   There was considerable data in relation  
4                   to that matter and it forms the bulk of the material at  
5                   the end of the report.

6                   There's a whole series of computer  
7                   printouts and Mr. Waito explained to Mr. Lindgren under  
8                   cross-examination that in doing the modeling the cost  
9                   information was incorporated into the model and the  
10                  computer printouts were produced and he said that he  
11                  used that information to make the comments about the  
12                  cost comparison of the various scenarios.

13                  He agreed that the committee chose not to  
14                  bring the cost part of it into the main body of the  
15                  report but the costing was done, and you have evidence  
16                  of Mr. Waito who was on that committee as to what it  
17                  meant from his perspective. You'll find that evidence  
18                  in Volume 388 at pages 66916.

19                  The next criticism by Forests for  
20                  Tomorrow is found on page 232 in paragraph 579 where  
21                  Forests for Tomorrow state, and I quote:

22                  "The committee did not consider the  
23                  overall benefits of FFT's scenarios  
24                  which resulted in a greater proportion of  
25                  the area harvested being treated."

1                   Well, the response to that is that you'll  
2 recall that there was no cost ceiling on the FFT  
3 regime.

4                   There's no question that without a limit  
5 on the amount of money one can spend on the one hand,  
6 the FFT scenarios, and a limit on the amount of money  
7 one can spend in the present practice estimate, on the  
8 other, it would come as no surprise that more area was  
9 treated under the FFT scenarios.

10                  So a comparison of the amount of area  
11 treated on one case and the other, again, is comparing  
12 apples and oranges and really isn't a fair comparison  
13 of one approach to management as opposed to the other,  
14 particularly having regard to the reality that there  
15 are limited amounts of money. Putting it another way,  
16 there are budgets within which one must in fact  
17 practise silviculture whether it's artificial or  
18 natural regeneration which is being used.

19                  The committee did comment on the  
20 differences in terms of costs and in the first part of  
21 their report - and I would just refer you to page 32 of  
22 the costing exercise where you'll find that - in  
23 summary, the committee found that spending 20 per cent  
24 more money would provide 15 per cent -- actually I  
25 don't think I'll give you the numbers, I'm not sure

1           they're a hundred per cent...

2                         The next item that the Forests for  
3                     Tomorrow were critical of was how the committee  
4                     allegedly disregarded the use of the ground application  
5                     of herbicides. You'll find that criticism in paragraph  
6                     580 of FFT's argument. Paragraph 580 states, and I  
7                     quote:

8                             "The committee assumed that FFT's  
9                     treatments require manual tending and did  
10                    not consider that herbicide use other  
11                    than aerial spraying is permitted under  
12                    the silvicultural prescriptions preferred  
13                    by FFT."

14                     So they're saying we, FFT, provide for  
15                    the use of the ground application of herbicides and  
16                    they're suggesting in this paragraph of their argument  
17                    that that was not considered in the costing exercise.

18                     Madam Chair, that statement is incorrect.  
19                     I will first refer you to the transcript reference  
20                    where my proposition that it is incorrect will be  
21                    found, that's transcript Volume 388 pages 66921 to 924,  
22                    and this matter is also discussed in the report itself  
23                    at page 53.

24                     The transcript reference again is to a  
25                    portion of the cross-examination of Mr. Waito by Mr.

1 Lindgren, and it is somewhat lengthy, but I will try to  
2 abbreviate it for you.

3 Mr. Waito says, in part:

4 "I can take you to a portion of the  
5 report where we have actually reflected  
6 that (i.e. the herbicide application from  
7 the ground)...", and he refers to page 54  
8 of the costing exercise.

9 And when you go to that page of the  
10 costing exercise you may recall, Madam Chair, Mr.  
11 Martel, that we have a number of tables where there are  
12 different regimes across the top of the chart A, B, C,  
13 and D and when you get over to the D column and you go  
14 down there you will see under the heading of tending  
15 they have reduced the cost of applying herbicides --  
16 pardon me, of tending from \$568 a hectare, which was  
17 the amount for the cost for the application of chemical  
18 herbicides at the time site preparation was done --  
19 just hold on one moment, Madam Chair.

20 Yes, it included where there was site  
21 preparation by ground application it was \$568 a  
22 hectare, and when they got down to the tending portion  
23 in regime D rather than costing manual tending they  
24 costed the ground application of chemical and it's  
25 reflected by indicating \$460 per hectare for the ground

1 application of herbicides as opposed to a higher cost  
2 which would have been there had it been manual tending.

3 And in any event, Madam Chair, you have  
4 the evidence regarding the relative costs of tending,  
5 whether it be manual, ground application of herbicides  
6 or the aerial application of herbicides. You find that  
7 in our argument in Chapter 1.9 and 1.11.1.

8 The evidence is clear that the aerial  
9 application of herbicides is much less costly than  
10 either the ground application of herbicides or the  
11 manual tending.

12 The next subject matter that FFT were  
13 critical of is in relation to comments about wood  
14 supply and what would the effect be of the various  
15 scenarios on wood supply.

16 The criticism can be found in their  
17 argument at page 233 paragraph 582. In that paragraph  
18 they indicate that despite Mr. Callaghan's conclusion  
19 that the FFT results would result in more hardwood than  
20 the present practice alternative, summaries at page 200  
21 and 202 -- pardon me, 200-202 of the report indicate  
22 softwood content of 90 per cent for FFT regime 1; 80  
23 per cent for FFT regime 2; and 80 per cent for the  
24 present practice alternative. FFT cite as authority  
25 for that proposition Volume 388, page 66925 which is

1 some of the evidence of Mr. Callaghan.

2                   But I would ask you to recall the  
3 evidence of Mr. Callaghan, which you will find at pages  
4 66926 to -928, where he indicates that in the cost  
5 exercise FFT's 90 per cent conifer for scenario 1 is  
6 mostly balsam fir, and MNR's present practice, 80 per  
7 cent conifer, has a higher level of black spruce;  
8 that Mr. Callaghan's estimate when he looked at effects  
9 on wood supply as a result of applying the various  
10 scenarios the yield information that he used came from  
11 60 management units not one; that Mr. Callaghan's  
12 calculations break the species composition down into  
13 six or seven major working groups, in other words, he  
14 distinguished between balsam fir and black spruce and  
15 those sorts of things which are important matters to  
16 consider, whereas the costing exercise looked only at  
17 conifer working groups as a package.

18                   And you will recall his evidence, Mr.  
19 Callaghan's evidence in MNR reply Panel No. 5 that by  
20 applying the FFT scenarios based on the methodologies  
21 that he applied using the same funding levels, not  
22 giving FFT unlimited funds, but at the same funding  
23 level that there was a significant difference in the  
24 conifer regeneration that could be expected, that one  
25 would expect significantly less conifer regeneration

1 applying the FFT approach in comparison to present  
2 practice.

3 Forests for Tomorrow were also critical  
4 of Mr. Callaghan's evidence because they say he  
5 arbitrarily picked 60 years as the point in time to  
6 look and see how much had been regenerated and of what  
7 in relation to the FFT scenarios and present practice.  
8 And they suggest -- this criticism is found in their  
9 argument at page 233 paragraph 583, and it states:

10 "He...", meaning Mr. Callaghan.

11 "...utilized 60 years as a point in time  
12 to look back on the forest conceding that  
13 was an arbitrary number. Since with  
14 extensive silviculture maximum MAI (mean  
15 annual increment) will generally occur at  
16 periods greater than 60 years, he did not  
17 use the figure that maximized the annual  
18 increment for the FFT scenarios."

19 So the suggestion here is that somehow  
20 Mr. Callaghan cooked the books by picking 60 years.  
21 When you use natural regeneration it takes longer to  
22 get the same results than it might if you were using  
23 artificial.

24 Mr. Callaghan responded to that criticism  
25 at least twice, once in Exhibit 2260 which is the

1 answer to FFT - you'll find the answer to FFT  
2 Interrogatory 14 to reply Panel 5 - and again during  
3 cross-examination at Volume 388 page 66928.

4 Mr. Callaghan indicated in the  
5 interrogatory that 60 years was simply chosen as an  
6 arbitrary time for all management regimes in order to  
7 allow a direct comparison, and he indicated the 60-year  
8 projection does not maximize the volume for any of the  
9 three options presented nor was that the intention of  
10 the analysis.

11 In cross-examination Mr. Callaghan was  
12 asked again whether maximum MAI would occur later in  
13 extent to the managed stands, and I quote, here's what  
14 he said in Volume 388:

15 "Yes, but you would also have the  
16 benefit for those areas on a shorter  
17 rotation...", referring to the  
18 intensively managed stands,

19 "...you will have the benefit for those  
20 areas on a shorter rotation, or maybe  
21 renewing them one and a half times. So  
22 that if you had a 70-year rotation for a  
23 plantation and a hundred year rotation  
24 for an extensively managed area, you'd  
25 get the growth from that 70 years plus 30

1                   years on top of that.

2                   "So taking 60, which is a pre-rotation  
3                   age for all of them, that's both  
4                   extensive and intensive, puts them more  
5                   on an equal footing and simplifies the  
6                   math. And, as we have learned through  
7                   this hearing, the timing within which  
8                   regeneration occurs as a result of your  
9                   regeneration efforts is an important  
10                  matter to be considered when you are  
11                  carrying out timber management  
12                  objectives; you are carrying out  
13                  silviculture to achieve objectives."

14                  And the last item that I would refer to  
15                  is not so much -- well, FFT argument page 233 paragraph  
16                  584 to 585 where they are critical about the fact that  
17                  present net worth was not utilized in the costing  
18                  exercise. I just commend that to you. They refer to  
19                  NPV.

20                  In my view, it supports the proposition -  
21                  this is at page 233 paragraph 584 to 785 - the comment  
22                  there supports the proposition that I made to you  
23                  before that they really don't expect there to be very  
24                  much artificial regeneration going on if you use NPV  
25                  calculations.

1                   Madam Chair, I'd like to move on to the  
2 subject matter of clearcut silvicultural system,  
3 and I'm going to do this in the reverse order from that  
4 which is shown on the outline I provided to you this  
5 morning.

6                   I'm going to deal with the issue of  
7 contiguity first. You'll recall on this issue that  
8 counsel for Forests for Tomorrow described a number of  
9 situations where there were contiguous cuts, and she  
10 did that for a number of management units.

11                  You may recall that what she did -- one  
12 of the things she did, she brought the map up to you -  
13 I never did see it - she drew a yellow border around  
14 something and said there was a contiguous cut, 20,000  
15 hectares.

16                  But you recall she went through a number  
17 of examples referring to different management units and  
18 was submitting to you that in Mr. Benson's clearcut  
19 exercise, which is really described in Exhibit 1604B,  
20 which is the second volume of FFT's Panel No. 5, Mr.  
21 Benson went through and did a clearcut exercise, and  
22 what she did in effect was to refer to some or all of  
23 them, I don't know, but many of the management units  
24 that Mr. Benson had made calculations on, and said:  
25 Here's an example of a contiguous cut of 7,000; here's

1       one of up to 50,000, here's one of 4,000, they were  
2       various sizes.

3                     The suggestion being made - attempting to  
4       get you to accept - that, firstly, large contiguous  
5       cuts are still occurring; and, secondly, she also used  
6       that in a way to set up her discussion of the  
7       undertaking which was provided to the Board near the  
8       end of the hearing and which was explained by Mr.  
9       McNicol, the one about which indicated what size of  
10      clearcuts are presently being put on the landscape as a  
11      result of application of the moose habitat guidelines.

12                  And there may have been some suggestion  
13      left with you - and I will review some of the evidence  
14      very briefly - that somehow in preparing that  
15      undertaking there had somehow been some improper motive  
16      or ability or attempt to mislead the Board, because  
17      you'll recall she got into a discussion about how the  
18      identification of what was a contiguous cut and what  
19      wasn't was different when one looked at the clearcut  
20      exercise methodology in comparison to the methodology  
21      that was used on the moose habitat guideline matter and  
22      explained by Mr. McNicol.

23                  I want to highlight a number of  
24      differences between those two exercises, between the  
25      clearcut exercise and the work which was required to

1 answer the undertaking regarding the application of the  
2 moose habitat guidelines.

3 Firstly, the clearcut exercise was an  
4 all-party exercise and as a result FFT was a full  
5 participant. One of the first challenges was to  
6 determine a methodology for determining what a  
7 contiguous cut would be.

8 The committee agreed in calculating what  
9 a contiguous cut was that they would go back 10 years  
10 in time, and the committee was also able to refer to  
11 cut-over maps, aerial photographs and make calculations  
12 of the type and amount -- the amount of residuals left  
13 within the outside perimeter of the cuts.

14 The most important aspect really of what  
15 that exercise was, an important element was that it was  
16 a retrospective look at clearcuts and, as a result,  
17 they could look at actual cut-over maps using aerial  
18 photographs and the like.

19 Now, the undertaking in relation to moose  
20 habitat guidelines was not of the same sort. The cut  
21 sizes were estimates of planned cuts, they were  
22 prospective and, therefore, it was impossible to do  
23 calculations in the same way as the clearcut exercise.

24 Secondly, in the clearcut exercise the  
25 identification of the largest single cut and the

1        largest contiguous cut was an objective of the  
2        exercise, whereas in the undertaking in relation to the  
3        moose habitat guidelines the Ministry was not asked to  
4        address contiguity, they were asked how the moose  
5        habitat guidelines had been applied in the present  
6        round of plans.

7                And, thirdly, as an administrative  
8        matter, the clearcut exercise was an extensive and  
9        lengthy exercise which took many months in order to  
10      answer the question from the Board, and it was not  
11      appropriate, the Ministry does not believe it was  
12      necessary to develop -- pardon me, it was therefore  
13      appropriate and necessary to develop a different  
14      methodology for answering the undertaking regarding the  
15      moose habitat guidelines.

16                The bottom line is that if the suggestion  
17      was made that MNR was in some way cooking the books to  
18      demonstrate something different than the clearcut  
19      exercise or an attempt to mislead the Board because of  
20      the differences in the methodology used, I would ask  
21      you to find that such suggestion is unfair and that you  
22      not accept it.

23                I want to deal for a moment with the  
24      results of Mr. Benson's clearcut exercise, the one  
25      which resulted in the size of contiguous cuts which Ms.

1       Swenarchuk enumerated for you during her oral argument  
2       and which you will find identified in Exhibit 1604B  
3       which is Volume No. 2 of FFT's Panel No. 5.

4                     The methodology which Mr. Benson used on  
5       that exercise to calculate contiguous clearcut size is  
6       described in the first part of that witness statement -  
7       and I don't have the pages, I'm sorry - but you'll  
8       recall his evidence, and it's recounted in that witness  
9       statement that this is the exercise where he used  
10      remote imagery.

11                  And Mr. Benson during his evidence  
12      admitted that there were difficulties with  
13      differentiating age of trees within the area which he  
14      identified as the outside perimeter of the area that he  
15      included in his calculation of contiguous cut-over.

16                  This particular exercise is referred to,  
17      and I'm going to refer to a portion of the transcript  
18      as opposed to the argument, but it's discussed in MNR's  
19      argument at pages 114 to 115 and in Volume 271 page  
20      48936 to 37. I want to refer you specifically to  
21      Volume 271, I'm going to quote from 48493 to 96.

22                  And just so you know where I'm going,  
23      Madam Chair, Mr. Martel, this is the exercise, this is  
24      the imagery which led to the discussion about whether  
25      Mr. Benson was able to tell the age of the trees in the

cut-over, and he indicated that he was unable to do it and they could be 40 years old, and in fact they could be 50 years old, this is what led to the discussion about: Well, when does a clearcut stop being a clearcut. And I think it's important just to draw your attention to certain passages.

Mr. Benson on 48933:

"This is a photograph of one of the satellite images and this is near Kapuskasing."

He indicates:

"The satellite photographs were taken from an orbit of 40 miles up. The area in this case I classify as a contiguous clearcut and was roughly a boundary along so...", he was indicating by hands, "...and that's the one that was classified as over 200,000 hectares as a contiguous clearcut."

Mr. Martel asks:

"Were you able to get any time frame  
in which the original cut started down to  
the most recent ones?

"THE WITNESS: Just a very rough time frame and only for the more recent

1                   cuts. I'd like to do that."

2                   He didn't do it, he said, I'd like to do  
3                   that.

4                   Later, Madam Chair, you asked Mr. Benson  
5                   to follow up Mr. Martel's question with respect to the  
6                   sensitivity of the satellite image:

7                   "How far back could they go with  
8                   respect to identifying an area as a  
9                   clearcut rather than a regenerated area,  
10                  for example, something had been cut 30  
11                  years ago, how far back would you go in  
12                  identifying clearcuts?

13                  "MR. BENSON: That's a problem and  
14                  when you try to put ages on it, I  
15                  couldn't do that. I would estimate  
16                  probably 40 years but there could be some  
17                  areas within there that might be even 50  
18                  years ago."

19                  That methodology is the same methodology  
20                  as the ones used on all of the clearcuts which were  
21                  reported as contiguous in Exhibit 1604D and which were  
22                  recounted to you by Ms. Swenarchuk. They are all  
23                  subject to the same difficulty.

24                  And there was further evidence regarding  
25                  this methodology, and I refer you specifically to the

1 evidence of Dr. Runneson from LUCARIS. That matter,  
2 Dr. Runneson's evidence is referred to on page 114 to  
3 115 of our argument.

4 I believe the written evidence of Dr.  
5 Runneson is in Volume 322 and his evidence was  
6 supplemented by written answers to questions which were  
7 posed to him after his evidence by Forests for Tomorrow  
8 the OFIA and the Ministry of Natural Resources, and the  
9 answers to those questions appear in Exhibit 2028.

10 And in the answers to the questions which  
11 were posed by the Ministry of Natural Resources, in  
12 particular Questions 6, 8, 9, and 10. I ask you to  
13 look at all of them. Dr. Runneson comments on the  
14 difficulties associated with the methodology which was  
15 used, the need for specific expertise to use it, and  
16 how that expertise is gained.

17 I urge the Board that when you read this  
18 evidence of Mr. Benson's and consider the submissions  
19 of Forests for Tomorrow regarding the size of the  
20 contiguous cuts referred to, that you remember the  
21 concerns about the methodology and, as a result,  
22 question the reliability of the numbers which were  
23 produced in his exercise.

24 Could I just have one moment, Madam  
25 Chair.

1           ---Discussion off the record

2           MR. FREIDIN: I would like to then move  
3           on to the next area of size of clearcut. And during  
4           these submissions I'll be addressing the comment by  
5           counsel for Forests for Tomorrow that the Ministry  
6           position on this matter is somehow shifting sands or is  
7           somehow questionable.

8           I would submit to you, Madam Chair, that  
9           based on a review of the evidence of the parties to the  
10          hearing that no one disagrees that a range of clearcut  
11          sizes is a desirable end and that the purpose of  
12          identifying a range of clearcut sizes would be to  
13          replicate as closely as possible natural disturbance  
14          patterns.

15           Forests for Tomorrow have suggested a  
16          range of clearcut sizes but they are one which has a  
17          hundred hectare limit with an opportunity to exceed  
18          that hundred hectare limit if one can justify that  
19          based on biodiversity concerns, and --

20           MR. LINDGREN: Madam Chair, just one  
21          clarification. That's the third time I've heard Mr.  
22          Freidin use the word limit to describe FFT's proposals.

23           I thought Ms. Swenarchuk was abundantly  
24          clear when she said it's a guideline, not a limit, and  
25          that's a substantial and significant distinction that

1           Mr. Freidin should keep in mind.

2                   MR. FREIDIN: Well, I will call it a  
3                 limit and the Board will have to decide whether it's a  
4                 guideline.

5                   In the ultimate determination, the  
6                 Ministry of Natural Resources still says it's a limit  
7                 and I would refer to it as that, realizing that Forests  
8                 for Tomorrow believes that that is an improper  
9                 characterization.

10                  There is an opportunity, they say, to  
11                 exceed that hundred hectare limit if you can justify it  
12                 based on biodiversity reasons and you document your  
13                 justification.

14                  They obviously must believe that small  
15                 clearcut sizes are somehow more compatible with  
16                 maintaining biodiversity in most cases otherwise they  
17                 wouldn't have suggested a range of clearcut sizes of  
18                 the type that they have.

19                  The only evidence that I can think of  
20                 that spoke to this range of clearcut sizes by FFT was  
21                 that of Dr. Suffling, who you recall indicated in his  
22                 evidence that there was no room for clearcuts over 200  
23                 hectares in size as a result of his analysis of the  
24                 fire history in Ontario.

25                  You will recall that the Ministry of

1       Natural Resources in reply Panel No. 2 called Mr. Paul  
2       Ward as a witness, and you'll recall his expertise in  
3       relation to fire management in this province and the  
4       lengthy document that he prepared which went through  
5       that history and which also critiqued the evidence of  
6       Dr. Suffling, particularly Dr. Suffling's comment that  
7       there was no room -- pardon me, Dr. Suffling's evidence  
8       that clearcuts greater than 200 hectares when coupled  
9       with large fires are exceeding the past level of  
10      disturbance in that size class and are, hence,  
11      unacceptable.

12                   That's one of the five specific  
13      suggestions made by Dr. Suffling which were addressed  
14      by Mr. Ward in his paper and you'll find those five  
15      items in Exhibit 2258 which is reply Panel 2 at pages 5  
16      and 6.

17                   I am not going to take you through that  
18      report, I would just advise that the conclusion that  
19      Mr. Ward came to after his extensive analysis of fire  
20      history in this province that Dr. Suffling's contention  
21      that there is no room for clearcuts larger than 200  
22      hectares because fires larger than 200 hectares are as  
23      prevalent now as in the past is not supportable.  
24      You'll find that in Exhibit 2258, reply Panel 2, tab 3,  
25      at page 12.

1                   I would ask you to read that report, and  
2 I note that Forests for Tomorrow did not mention Mr.  
3 Ward's paper in their argument.

4                   I would submit to you that it is a paper  
5 which has considerable merit, and when you come to  
6 decide whose evidence to accept in relation to the fire  
7 history in this province and the size of disturbance  
8 patterns created as a result of wild fire in this  
9 province that you accept the evidence of Mr. Ward over  
10 that of Dr. Suffling where it conflicts.

11                  I would like to deal with the issue of  
12 clearcut. I'd like to deal with the issue of clearcut  
13 sort of in the context of the question which has come  
14 up repeatedly from the Board and primarily from you,  
15 Mr. Martel, and it came up in Forests for Tomorrow:  
16 Well, why not a hundred, why not 200, like, why not a  
17 limit? I want to start off by referring to some  
18 evidence of Dr. Thompson.

19                  MR. MARTEL: But I think if you might  
20 though, I think I was talking in terms of -- let me put  
21 it this way: The evidence we have on clearcuts is you  
22 should have a range and it should replicate fire, and I  
23 think the thing that's bothered me to some degree is  
24 that I've heard all kinds of people say: I don't care  
25 about the biological reasons, the biodiversity, I don't

1 care about any of it in northern Ontario, we think  
2 clearcuts are too big.

3 I mean, whether you like it or not,  
4 that's what people in northern Ontario say. And so  
5 I've tried to put it in that context, Mr. Freidin,  
6 I don't want to take it out of some other context.

7 What the owners can expect, regardless of  
8 the evidence that all the experts have brought here,  
9 and that's a question that still bothers me because  
10 what I think they're suggesting - I might be wrong, but  
11 I know a few of them in northern Ontario - what they're  
12 suggesting is totally different from what all the  
13 experts are saying, and I don't know how you answer  
14 that question.

15 MR. FREIDIN: Let me answer that question  
16 this way, Mr. Martel, and I'm doing that now as I  
17 understand that you're saying that people have said I  
18 don't care about the biological reasons, I just don't  
19 like clearcuts.

20 Now, when I say they don't care about the  
21 biological reasons, I'm not sure whether that means  
22 they don't care about wildlife and they don't care  
23 about biodiversity.

24 MR. MARTEL: Let me be very frank. They  
25 look at a clearcut, Mr. Freidin, the public I know up

1 here, and some of the witnesses we have seen, they look  
2 at a clearcut and, as a friend of mine said: A jack  
3 rabbit has to carry a lunch pale to get across a  
4 clearcut. And they are offended.

5 I say that, and that's why I've raised  
6 this question over and over again. My experience is  
7 that to them the big item of concern is going out there  
8 along the highway or a road and seeing this massive  
9 area cut. They don't ask about biodiversity, they  
10 don't ask about wildlife, they think when you cut all  
11 that to wildlife there's a disadvantage.

12 And I'm saying, I'm trying to put it in  
13 that context that they're not trying to be  
14 sophisticated, they simply see this massive cut and it  
15 drives them bananas and they're the owners,  
16 theoretically.

17 MR. FREIDIN: Let me begin my response by  
18 referring to something that was contained in the review  
19 of management planning in the United States. And I  
20 refer to this knowing that some people, the situation  
21 you've mentioned:

22 "No one is satisfied with agency  
23 officials who see their role only as  
24 mediators, who hold no strong values or  
25 act as if they possess no expertise

1                   of their own. Most of the Forest Service  
2                   simply seek to occupy the middle ground  
3                   between conflicting political pressures.  
4                   The agency must always argue  
5                   vigorously...", and this is what I  
6                   emphasize,

7                   "...the agency must always argue  
8                   vigorously for maintaining the integrity  
9                   of the land and the resources for future  
10                  generations."

11                  And I referred you in my  
12                  argument-in-chief about concerns that people have about  
13                  that very matter, maintaining the integrity of the land  
14                  and the resources for future generations if proper  
15                  management does not occur.

16                  And so if the Board is convinced - and  
17                  remember this is an environmental assessment - if the  
18                  Board is convinced that by having clearcuts of one type  
19                  or another, and in this case I'm saying a whole bunch  
20                  of small cuts, that that will not maintain the  
21                  integrity of the land and the resources for future  
22                  generations, that that indeed is not consistent with  
23                  the attempts to conserve or maintain, biodiversity.  
24                  That that is not consistent with evidence that you have  
25                  heard about how one properly would manage for wildlife,

1 if you come to those conclusions - and those are the  
2 two of the very basic issues that you have to address -  
3 if you come to those conclusions, then I would submit  
4 to you that you are in a situation no different than a  
5 resource management agency, you must in fact do what is  
6 correct for maintaining the integrity of the land and  
7 the resources for future generations.

8 And if that means that you have to say,  
9 or if that means that you conclude that a range of  
10 small clearcuts will not do that, if that means that  
11 you say, I accept the evidence of many witnesses who  
12 appeared before us and said it would be a bad idea for  
13 the resource, for biodiversity, for wildlife to impose  
14 a regime where there was a series of small cuts across  
15 the landscape, then you must find, I would submit, that  
16 such a regime should not be put in place.

17 Now, what do you say to those who have  
18 spoken to you over the many years that they hate those  
19 big clearcuts, because they just don't like them.

20 If there is going to be a continuing  
21 debate or people are going to remain, -- there will  
22 always be people who will remain unsatisfied, there  
23 will not be consensus on the issue of clearcut size. I  
24 would submit to you that it is better to come down on  
25 the side of doing what is best for the resource and to

1 attempt, as difficult as it may be, to explain to those  
2 members of the public who say I don't care about the  
3 biology and I don't care about those other matters, I  
4 just don't like the size of clearcuts, it would be  
5 better to have to explain to them why it makes good  
6 resource management sense, why it is best for  
7 maintaining the integrity of the land and the resources  
8 for the future generations that we still have large  
9 cuts; better that than the opposite.

10 Because if you ignore the evidence before  
11 you on this issue and impose small clearcuts to address  
12 the concern that you have indicated, Mr. Martel, to use  
13 Dr. Baskerville's words, I think you would be  
14 satisficing, you would be giving into that pressure,  
15 social pressure, political pressure - I'm not too sure  
16 how one would properly describe it - at the expense of  
17 adverse effects on maintaining the integrity of the  
18 land and the resources for future generations. That is  
19 what expert after expert has said to you.

20 Now, there's no question there is a  
21 difference on this issue. I mean, Forests for Tomorrow  
22 are still advocating smaller clearcuts and they are  
23 doing so because of their view of what science says  
24 should be done. Then you've got other parties who  
25 don't agree with that. So this is one of those

1 difficult situations where you're going to have to  
2 choose and you will have to assess the evidence of all  
3 the witnesses who spoke on this matter.

4                   And I suggest to you that the large  
5 weight of the evidence is strongly supportive of the  
6 position being put forward by the Proponent on this  
7 issue, that it is supported not only by witnesses who  
8 work for the Proponent, that it is supported by other  
9 professional witnesses who have come before you, and I  
10 refer to Dr. Thompson and Dr. Welsh. I'm going to  
11 refer you to something that Dr. Thompson said.

12                  So that's really where it comes to. This  
13 is going to be a big education job to be done, but  
14 let's not avoid the difficult task of explaining to the  
15 public or doing that education job at the risk of  
16 making the wrong decision for the good of the  
17 resource, you know, the right decision for the resource  
18 itself.

19                  One last comment on that, Mr. Martel.  
20 It's indicated in our material that this Board has been  
21 sitting for four and a half years and has been hearing  
22 all these matters, and you've given people an  
23 opportunity to come forward, some of them have come  
24 forward and said exactly what you've said: We just  
25 don't like them.

1                   But this is the start. You are the  
2 independent body. I mean, you're an independent body.  
3 They appear before you, you gave them an opportunity to  
4 have their say, and you're now charged with making  
5 decisions and people are looking to that decision for  
6 some guidance on this matter.

7                   Now, if I could refer to Dr. Thompson,  
8 the portion of his evidence begins at page 66133 and  
9 I'm going to refer to portions from that section of the  
10 transcript starting there and going to 66139. He says:

11                  "I think that in terms of the  
12 development of the model, what you want  
13 to know are: What is the range of sizes  
14 that occurred, what is the range of  
15 intensity that occurred, what is the  
16 range of biological legacies that are  
17 left within these fires, and what are the  
18 ecosystem processes that are different  
19 after clearcutting as opposed to after  
20 fire?

21                  "And I think that if we work towards  
22 developing these models, then we will  
23 have a much better model for managing the  
24 forest when you do that."

25                  He goes on at 66134:

1            "I'm talking about the way in which we  
2            distribute logging across the landscape  
3            and I'm talking about the way in which  
4            fire behaves in different ecosystem types  
5            because that is very different.

6            "And so if we are going to do this  
7            kind of management and work towards a  
8            more natural means of regenerating the  
9            forest then we must, I think, we must be  
10           very cognizant of the way in which  
11           natural disturbance affects all ecosystem  
12           types."

13           And he says:

14           "It's much more than just size."  
15           I'll address that matter and I've  
16           addressed it already in my arguments-in-chief, that  
17           size is an important aspect of this.

18           Mr. Martel you asked at 66135:

19           "Other people think clearcuts are far  
20           too big and we have heard that more  
21           frequently than any other complaint in  
22           this hearing.

23           "DR. THOMPSON: I know, but I think  
24           it's a mistake to listen to that.

25           "MR. MARTEL: Well, you tell the

1                   public who owns the land that it's a  
2                   mistake to listen to it."

3                   So you were raising the same thing.

4                   "DR. THOMPSON: Well, I mean let's  
5                   think about the consequences of going out  
6                   and making a lot of small clearcuts on  
7                   the landscape.

8                   "If large clearcuts are bad, and the  
9                   way in which they're done now I agree is  
10                  perhaps not the best way to do it, then  
11                  small clearcuts probably at the other  
12                  end of the spectrum are equally as bad  
13                  because they in no way mimic natural  
14                  processes in the way in which the boreal  
15                  forest develops.

16                  "And if you want to regenerate the  
17                  boreal forest in some sort of natural  
18                  system way, if you want to regenerate the  
19                  natural forest in terms of the ecosystems  
20                  that are currently there, then the way  
21                  not to do it is to go out and log in  
22                  small patches because the boreal forest  
23                  is not driven in that way."

24                  That is what MNR witnesses have been  
25                  saying from the beginning of the hearing. Dr. Thompson

1 continues at the bottom of 66137 and states:

2                    "Boreal forests develop over broad  
3                    areas, they don't develop over little  
4                    tiny patches, and if you go out and use  
5                    cookbook forestry by saying that in jack  
6                    pine and in upland black spruce and  
7                    lowland black spruce and in boreal upland  
8                    mixed woods we're going to have a  
9                    clearcut size of 200 hectares, you're  
10                  going to destroy the system."

11                  MR. MARTEL: What worries me, Mr.

12                  Freidin, as I listened to all of that evidence by all  
13                  of the experts, one seems to assume that if one - and  
14                  we'll use Dr. Thompson's figures 200 - that 200 becomes  
15                  the figure that's always used, that one can't have a  
16                  range of 75 here, 190 there, we get this -- you see,  
17                  we've always got -- I'm not saying you, but we've seen  
18                  the evidence comes that it's either/or, it's a hundred  
19                  hectares that one party wants all the time or doesn't  
20                  want, it's what the effects of 130 will be all the  
21                  time, and I'm not sure why there isn't flexibility  
22                  considered.

23                  You said, for example - let's use a  
24                  figure that hasn't been heard of yet, 210 - and all the  
25                  time you can operate within that 210 hectares any old

1 way you want and there will be reasons for differing,  
2 but that doesn't seem to be what you hear from anyone,  
3 it's always my way or the highway sort of approach.

4                   And can you address that because I'm not  
5 sure -- I know when I think about it I'm not thinking  
6 in terms of something that's got to be there each and  
7 every time, and so if you could address that it might  
8 be helpful.

9                   MR. FREIDIN: Let me begin firstly by  
10 indicating that both Dr. Thompson and Dr. Welsh were  
11 suggesting that a range should be determined and,  
12 secondly -- and I'll get to the reasons for this  
13 submission if you want.

14                   MR. MARTEL: Should not or should?

15                   MR. FREIDIN: There should be a range. I  
16 would submit to you there's no magic in a number and on  
17 one hand you ask yourself: Well, why have a limit if  
18 there is no sound basis for a limit, and you've heard  
19 from many witnesses who have said it doesn't make sense  
20 to have a limit if there's no sound basis for it.

21                   When you start talking about limits -- so  
22 you've got that sort of in a general way, but let me  
23 look at suggestions which have been made for limits or  
24 a range of cuts, these small cuts going up with a limit  
25 of a hundred.

1                   In addition to the undesirability of just  
2 imposing a limit which has no sound basis, there are  
3 two problems that I submit exist in relation to setting  
4 a limit. One is a practical one - and this is not the  
5 most important of the two - it's a practical one, and  
6 that is, you're going to set this limit, then you're  
7 going to have documentation requirements every time you  
8 exceed it or want to exceed it, you are going to put  
9 the timber management planning process into a situation  
10 where one of the things everybody seems to be trying to  
11 avoid will in fact be created and that is more paper,  
12 more analysis in relation to something which has  
13 already been decided, really has no sound basis for it  
14 in the first place.

15                  And, secondly, let's assume, Mr. Martel,  
16 that in an attempt to address the public's concern  
17 about size of clearcut, assuming they would be happier  
18 if they just knew that there was a limit, let's assume  
19 that you chose the limit of a hundred hectares, what's  
20 going to happen, you're going to go to the public that  
21 have been asking you these questions and they're going  
22 to say: Oh, well, great, the Environmental Assessment  
23 Board has set a limit, we always wanted a limit and now  
24 we've got it.

25                  But the evidence you have heard is that

1 if you set that limit what's going to happen is you're  
2 going to have a whole bunch of exceptions, all  
3 necessary, all properly documented through a great  
4 effort of a bunch of planners but you're going to have  
5 a whole bunch of exceptions because the rule wasn't a  
6 good one in the first place.

7                   And then I ask you, or you should ask  
8 yourself: What will the people who you are attempting  
9 to satisfice going to say then? They're going to say:  
10 What a joke, a hundred hectare clearcut limit, my foot.  
11 Look at this, look at all these exceptions.

12                  You will be creating a situation where  
13 people, if they are not cynical now, will being  
14 extremely cynical of the system because what they will  
15 see is a bunch of exceptions, and you know that the  
16 exceptions will in fact be proper because science and  
17 the witnesses who have come before you indicate that it  
18 has to be, you have to have that range.

19                  Now, the Ministry of Natural Resources  
20 has recognized the need for a range and it's in the  
21 Ministry's term and condition 78(b) where the Ministry  
22 has proposed that it will prepare environmental  
23 guidelines which will provide for a range of clearcut  
24 size and that it will be developed by people who have  
25 expertise in that area.

Forests for Tomorrow in their submissions indicated that they were somewhat troubled by this interpretation of the written argument of the Ministry of Natural Resources, that there was somehow a backing away from a commitment to prepare such guidelines.

The Ministry of Natural Resources is not changing its commitment in that regard. The Ministry of Natural Resources' commitment as described in term and condition 78(b), and you will note that it is amended and you'll find the amendment on page 873 of our argument, commits to in fact sit down with the experts and develop the range which is appropriate.

Forests for Tomorrow have said: Well, we think the range should be a range of small cuts up to a hundred. My submission to you is that on the evidence that you have heard, including the evidence I've just referred to from Dr. Thompson, that's just isn't the range, and if that isn't the range -- if you agree that that isn't the range and you impose it as a term and condition, it's going to give rise to the problems that I mentioned before.

If I might just have a moment to...

MADAM CHAIR: Can we have a five-minute break, Mr. Freidin?

MR. FREIDIN: Yes.

1                   MADAM CHAIR: Thank you.

2                   ---On recessing at 3:30 p.m.

3                   ---On resuming at 3:40 p.m.

4                   MADAM CHAIR: Go ahead, Mr. Freidin.

5                   MR. FREIDIN: I would like to conclude my  
6 comments in relation to this issue of clearcuts, and  
7 particularly the range of clearcut sizes, by firstly  
8 referring you to Dr. Thompson's evidence as to where he  
9 indicated that a range was required.

10                  It was referred to at MNR argument pages  
11 313 to 314. In terms of Dr. Welsh, he said that a  
12 range was required and that the range will vary across  
13 the province; that is, it would be different in Kenora  
14 than it might be in Sault Ste. Marie -- or did he say  
15 Sault Ste. Marie. He didn't use those exact words, but  
16 he said vary across the province.

17                  You'll find that in Volume 383 at pages  
18 66213 to 66225, and he deals with a lot of other issues  
19 in that section which I will refer you to in a moment,  
20 but the discussion about the range is there.

21                  He also said that concerns arise from the  
22 popular press regarding what happens on the west coast  
23 and that there is a need to help each other understand.  
24 In that regard I would just like to read a very brief  
25 section from Dr. Welsh's cross-examination commencing

1 at pages 66216 at line 12 to 66217 line 19.

2 Dr. Welsh said the following:

3 "Certainly the clearcut size  
4 consideration is something we all think a  
5 great deal about right now and I would  
6 like to -- we sort of try to imagine  
7 from a national perspective. A lot of  
8 our present public knowledge about  
9 clearcut size I believe stems from  
10 popularized something from what's  
11 happening in west coast forests."

12 He goes on:

13 "And I would argue any clearcut size  
14 there is nonsense on the west coast  
15 because you really can't regenerate those  
16 forests in a natural way and have  
17 clearcuts.

18 "Equally you can't use uneven-aged  
19 forest harvesting in a jack pine forest  
20 in Ignace or a clearcut of 20 or 30 or 40  
21 hectares and regenerate the landscape  
22 because that's not the way that landscape  
23 works.

24 "We have to do something different  
25 when we're working north of Sault Ste.

1                   Marie from what we do at Ignace. Let  
2                   alone, we can't do the same thing on  
3                   Vancouver Island that we do in Ontario,  
4                   and I think that is the point.

5                   "And what we have to do is to try to  
6                   help each other to understand what the  
7                   differences are."

8                   The Ministry of Natural Resources in  
9                   reply Panel No. 2 Exhibit 2258 at page No. 11 states in  
10                  relation to this matter as follows:

11                  "In the near term it is MNR's  
12                  intention to address the subject of  
13                  clearcut size and distribution using the  
14                  best available scientific information.

15                  "For this reason direction will be  
16                  developed which provides specific  
17                  information on harvest block layout on  
18                  the basis of Ontario's ecoregions. This  
19                  information will describe...", and the  
20                  very first item that is referred to is:

21                  "...normal ranges of clearcut block sizes  
22                  by ecoregion based on natural patch size  
23                  and distribution derived from information  
24                  such as tree silvics, forest stand  
25                  distribution, and regional fire history

1                   patterns."

2                   So the Ministry of Natural Resources is  
3                   saying the same thing as Dr. Welsh and recognizes  
4                   there's a need for the range of clearcut sizes to be  
5                   different, that they may vary based on ecoregions as  
6                   one looks across the entire area of the undertaking.

7                   A related topic that I just want to  
8                   address briefly is the moose habitat guidelines. And I  
9                   thought it might be useful to just mention them in the  
10                  context of this discussion because you may ask  
11                  yourself: Well, don't you have a clearcut limit about  
12                  the moose habitat guidelines, so why don't we impose a  
13                  limit just like the moose habitat guidelines.

14                  My answer to that is, firstly, those  
15                  guidelines in relation to clearcut are there for moose  
16                  management purposes. As you are aware, there is an  
17                  obligation to provide a rationale if one exceeds 260  
18                  hectares, that is, for moose management purposes, it is  
19                  not a clearcut limit, FFT agreed that it's not a  
20                  clearcut limit.

21                  Another issue which was: What about the  
22                  70 per cent of the wildlife species, and this again is  
23                  not directly on point but it's related and I wanted to  
24                  address it: What about 70 per cent of the species who  
25                  have habitat provided as a result of moose management,

1 what happens if moose capability is low and, therefore,  
2 one exceeds the ideal in high capability area of 130,  
3 in fact you may go beyond 260 in a low capability area.

4                   The suggestions were made during FFT's  
5 submissions and cross-examination that somehow 70 per  
6 cent of the species would be adversely affected or not  
7 adequately addressed if you had those clearcuts going  
8 beyond 260, for example, for moose management purposes.  
9 That was their suggestion.

10                  What was the evidence in that regard.  
11                  The only evidence in that matter is the evidence of  
12 John McNicol, who was asked specifically about that  
13 matter in cross-examination by Mr. Lindgren. Again, if  
14 I can have a moment I will find it. I'm referring to  
15 Volume 388 page 66872 to 875, and I would commence just  
16 by reading the question from Mr. Lindgren:

17                  "We heard the MNR claim from time to  
18 time that applying the moose habitat  
19 guidelines benefits some 70 per cent of  
20 the terrestrial vertebrates in the area  
21 of the undertaking.

22                  "Can you tell me precisely  
23 how these 70 per cent are benefitted when  
24 you are not applying the moose guidelines  
25 as rigorously as they should be; namely,

1                   when you are exceeding the 260-hectare  
2                   suggested area?

3                   Mr. McNicol describes the difference  
4                   between high, low and medium capability areas and he  
5                   states at page 66873, lines 10 to 18 as follows, after  
6                   indicating that there is a -- he says.

7                   "What I'm saying is in those areas  
8                   where we do not apply the guidelines  
9                   rigorously there is not as diverse a  
10                  suite of species in those forests as in  
11                  forests where guidelines are applied  
12                  rigorously, and the species that benefit  
13                  generally from a rigorous application of  
14                  the guidelines do not, as a  
15                  generalization, exist in those types of  
16                  forests to the same degree as they do in  
17                  those areas of moderate to high  
18                  capability."

19                  That is the evidence that you have in  
20                  relation to that question, and I would submit to you  
21                  that having regard, particularly to the expertise of  
22                  Mr. McNicol, that it is evidence upon which you can  
23                  reasonably rely.

24                  Madam Chair, it's ten to four. I think  
25                  it would be an appropriate time to break, rather than

1 starting but not finishing my next topic, and I think  
2 actually the next three topics were going to be  
3 addressed as a package, I prefer to deal with it as a  
4 package, and I don't think we will have any difficulty  
5 finishing tomorrow if we break 10 minutes early.

6 MADAM CHAIR: All right. Thank you very  
7 much, Mr. Freidin.

8 We will adjourn and be back at nine  
9 o'clock tomorrow morning.

10 ---Whereupon the hearing was adjourned at 3:50 p.m., to  
11 be reconvened on Thursday, November 12th, 1992,  
12 commencing at 9:00 a.m.  
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